



February 22, 2008

ENGROSSED SENATE BILL No. 89

DIGEST OF SB 89 (Updated February 20, 2008 4:42 pm - DI 101)

Citations Affected: IC 4-6; IC 5-20; IC 6-1.1; IC 20-24; IC 20-30; IC 23-2; IC 24-4.4; IC 24-4.5; IC 24-5; IC 24-9; IC 25-34.1; IC 27-7; IC 34-30; noncode.

Synopsis: Requires the homeowner protection unit (unit) within the attorney general's office to establish a toll free telephone number to receive calls from persons having information about suspected fraudulent transactions and practices concerning residential real estate transactions. Requires the unit to share information reported by callers to the telephone number with appropriate law enforcement and regulatory agencies. Allows the Indiana housing and community development authority (authority) to make or participate in the making of: (1) construction loans; and (2) mortgage loans; for multiple family residential housing under terms approved by the authority. Requires the authority to ensure that a mortgage loan: (1) acquired by the authority; or (2) made by a mortgage lender with funds provided by the authority; may not know knowingly be made to a person whose adjusted family income exceeds 125% of the median income for the geographic area involved. For purposes of allocating federal low income housing credits, provides that a "qualified building" is a building that is used or
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Effective: Upon passage; July 1, 2008; January 1, 2009.

Lawson C, Lanane, Young R
Michael, Paul, Zakas, Steele, Drozda
(HOUSE SPONSORS — GRUBB, AUSTIN, HARRIS T, BORROR)

January 8, 2008, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
January 15, 2008, amended, reported favorably — Do Pass.
January 22, 2008, read second time, amended, ordered engrossed.
January 23, 2008, engrossed.
January 24, 2008, read third time, passed. Yeas 48, nays 0.
HOUSE ACTION
January 30, 2008, read first time and referred to Committee on Financial Institutions.
February 21, 2008, amended, reported — Do Pass.

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will be used to provide residential housing for special needs populations. (Current law provides that a "qualified building" is a building that is used or will be used to provide residential housing for persons with disabilities.) Provides that the authority's authority to issue bonds is subject to the approval of the public finance director. (Current law provides that the authority's bonding authority is subject to the approval of the governor.) Repeals provisions concerning job and contract awarding preferences for the authority's program for making or participating in the making of mortgage loans for multiple family residential housing. Repeals provisions concerning the articles of incorporation of sponsors, builders, or developers of multiple family residential housing. Beginning with the school year that begins in 2010, requires school corporations and accredited nonpublic schools to include in their curricula for grades 9 through 12 instruction designed to: (1) increase students' awareness of consumer transactions, including mortgage transactions; and (2) foster personal financial responsibility. Provides that a school corporation or an accredited nonpublic school may provide the instruction by integrating it into its mathematics curriculum. Requires the department of education and the department of financial institutions to develop guidelines to assist teachers assigned to provide the instruction. Increases the amount of the bond that a licensed loan broker must maintain with the commissioner from \$50,000 to \$100,000. Eliminates the exemption from the loan broker statute for: (1) persons authorized to make loans on behalf of, or insured by, certain federal agencies; and (2) licensed real estate brokers and salespersons who render loan related services in a real estate transaction. Specifies that evidence of compliance with the licensing and registration requirements for loan brokers, originators, and principal managers may include a national criminal history background check by the Federal Bureau of Investigation (FBI). Specifies that the securities commissioner (commissioner) shall require each: (1) equitable owner of a loan brokerage business; and (2) applicant for registration as an originator or a principal manager; to submit fingerprints for a national criminal history background check by the FBI. Prohibits the commissioner from releasing the results of a national criminal history background check to a private entity. Allows the commissioner to designate a multistate automated licensing system and repository (system) as the sole entity responsible for processing applications for: (1) licenses for loan brokers; and (2) certificates of registration for originators and principal managers. Allows the commissioner to check the qualifications and background of each: (1) equitable owner of a loan brokerage business; and (2) applicant for registration as an originator or a principal manager; by accessing the system. Specifies that a loan broker is subject to the state statute requiring disclosure of a breach of the security of any records: (1) maintained by the broker; and (2) containing the personal information of a borrower or prospective borrower. Prohibits loan brokers, originators, and principal managers from disposing of unencrypted, unredacted personal information with respect to borrowers or prospective borrowers without first taking certain actions to render the personal information illegible or unusable. Prohibits a person from performing specified acts in connection with a contract for the services of a loan broker. Provides that: (1) first lien mortgage transactions are subject to regulation by; and (2) creditors making first lien mortgage transactions must be licensed by; the department of financial institutions. Requires a creditor, a mortgage servicer, or an agent of a creditor to acknowledge a written offer made in connection with a proposed short sale of property that is subject to a mortgage transaction that is at least 10 days delinquent. Provides that the acknowledgment must be provided not later than 10 business days after the date of the offer. Requires the creditor, servicer, or agent to accept or reject the short sale offer not later than 20 business days after receipt of the offer.

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Requires the department of insurance to establish an electronic system for the collection and storage of the: (1) names; and (2) license, registration, or certificate numbers; of certain professionals that participate in or assist with residential mortgage transactions. Provides that the system must allow closing agents to: (1) input the required information with respect to each professional involved in the transaction; and (2) submit the form electronically to a data base maintained by the department of insurance. Requires the department of insurance to make the data base accessible to: (1) the state agencies responsible for regulating the specified professionals; and (2) the homeowner protection unit in the attorney general's office. Specifies that a violation of the home loan practices act is a deceptive act subject to action by the attorney general. For a deceptive act involving home loan practices, increases: (1) the damages that may be awarded to an aggrieved consumer; and (2) the amount of the civil penalties that may be imposed on a violator. Provides that any civil penalties collected by the attorney general shall be deposited in the home owner protection unit account in the general fund. Prohibits a creditor from recommending or issuing to a prospective borrower: (1) a stated income or no documentation loan; or (2) a home loan if the creditor does not first conduct a reasonable inquiry concerning the prospective borrower's ability to repay the loan. Provides that if a creditor conducts a reasonable inquiry, the creditor is not liable if the borrower later defaults on a home loan issued by the creditor. Requires a settlement service provider to make closing documents available to a borrower at least 48 hours before the closing, subject to the settlement service provider's ability to obtain the closing documents from the creditor making the home loan, after the settlement service provider's good faith effort to obtain the closing documents from the creditor. Provides that if: (1) the borrower does not receive the closing documents within the time required; or (2) the terms of the home loan set forth in the documents provided differ from the terms presented to the borrower at the time of closing; the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the loan or the purchase contract. Increases the statutory damages that may be recovered by a person aggrieved by a violation of the home loan practices act (act) from: (1) two times; to (2) four times; the amount of the finance charges under the contract. Enhances the crime involving a knowing or intentional violation of the act from a Class A misdemeanor to a Class D felony. Increases the civil penalty for the violation of: (1) the act; or (2) an injunction issued to enjoin a violation of the act; from \$10,000 to \$20,000. Requires the real estate appraiser licensure and certification board to require each initial applicant for licensure or certification as a real estate appraiser to submit fingerprints for a national criminal history background check by the FBI. Prohibits the board from releasing the results of a national criminal history background check to a private entity. Requires various state agencies to form the mortgage lending and fraud prevention task force to coordinate the state's efforts to: (1) regulate the various participants involved in originating, issuing, and closing home loans; (2) enforce state laws and rules concerning mortgage lending practices and mortgage fraud; and (3) prevent fraudulent practices in the home loan industry and investigate and prosecute cases involving mortgage fraud. Requires the Indiana housing and community development authority to provide, not later than November 1, 2008, a report to the legislative council that includes the following: (1) An identification of new and existing funding sources that can be used to assist Indiana homeowners in refinancing their existing mortgage transactions, in order to prevent the foreclosure of the homes secured by the mortgages. (2) A plan for the rehabilitation of areas in Indiana that have been adversely or disproportionately affected by mortgage foreclosures. Requires the securities commissioner and the director of the department of financial

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institutions to cooperate to determine the appropriate state agency or department to regulate a person subject to regulation, licensure, or registration under both the loan broker statute and the UCCC. Makes technical changes. (The introduced version of this bill was prepared by the interim study committee on mortgage practices and home loan foreclosures.)

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February 22, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 89

A BILL FOR AN ACT to amend the Indiana Code concerning
business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-6-12-3.5 IS ADDED TO THE INDIANA CODE
AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
UPON PASSAGE]: **Sec. 3.5. (a) Not later than July 1, 2008, the unit
shall establish a toll free telephone number to receive calls from
persons having information about suspected fraudulent:**

(1) mortgage lending practices;

(2) real estate appraisals; or

(3) other practices;

involving residential real estate transactions.

**(b) The toll free telephone number required by this section shall
be staffed by:**

**(1) employees or investigators of the unit who have knowledge
of the laws concerning:**

(A) mortgage lending practices;

(B) real estate appraisals; or

(C) other practices;

involving residential real estate transactions;

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(2) representatives of any of the entities described in section 4(a)(8) through 4(a)(10) of this chapter who have knowledge of the laws concerning:

(A) mortgage lending practices;

(B) real estate appraisals; or

(C) other practices;

involving residential real estate transactions; or

(3) a combination of persons described in subdivisions (1) and (2).

The attorney general shall designate persons to staff the toll free telephone number as required by this subsection.

(c) The persons designated by the attorney general under subsection (b) to staff the toll free telephone number required by this section shall ensure that any information received from callers to the telephone number is shared with any entity described in section 4 of this chapter that has jurisdiction over the matter reported. The unit shall establish uniform procedures for:

(1) responding to calls received;

(2) protecting:

(A) the anonymity of callers who wish to report information anonymously; or

(B) the identity of callers who request that their identity not be disclosed;

(3) documenting and verifying information reported by callers; and

(4) transmitting reported information to the appropriate entities described in section 4 of this chapter.

(d) The unit shall publicize the availability of the toll free telephone number established under this section in a manner reasonably designed to reach members of the public.

SECTION 2. IC 4-6-12-8, AS AMENDED BY P.L.181-2006, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. The unit shall cooperate with the Indiana housing and community development authority in the development and implementation of the home ownership education programs established under ~~IC 5-20-1-4(f)~~ IC 5-20-1-4(d).

SECTION 3. IC 4-6-12-9, AS AMENDED BY P.L.64-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) The homeowner protection unit account within the general fund is established to support the operations of the unit. The account is administered by the attorney general.

(b) The homeowner protection unit account consists of:

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1 **(1) fees collected under IC 24-9-9; and**

2 **(2) civil penalties collected under IC 24-5-0.5-4(l)(3).**

3 (c) The expenses of administering the homeowner protection unit
4 account shall be paid from money in the account.

5 (d) The treasurer of state shall invest the money in the homeowner
6 protection unit account not currently needed to meet the obligations of
7 the account in the same manner as other public money may be invested.

8 (e) Money in the homeowner protection unit account at the end of
9 a state fiscal year does not revert to the state general fund.

10 SECTION 4. IC 5-20-1-4, AS AMENDED BY P.L.99-2007,
11 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2008]: Sec. 4. (a) The authority has all of the powers
13 necessary or convenient to carry out and effectuate the purposes and
14 provisions of this chapter, including the power:

15 (1) to make or participate in the making of construction loans to
16 ~~sponsors of~~ **for** multiple family residential housing ~~that is~~
17 ~~federally assisted or assisted by a government sponsored~~
18 ~~enterprise, such as the Federal National Mortgage Association,~~
19 ~~the Federal Home Loan Mortgage Corporation, or the Federal~~
20 ~~Agricultural Mortgage Corporation, the Federal Home Loan~~
21 ~~Bank, and other similar entities~~ **under terms that are** approved
22 by the authority;

23 (2) to make or participate in the making of mortgage loans to
24 ~~sponsors of~~ **for** multiple family residential housing ~~that is~~
25 ~~federally assisted or assisted by a government sponsored~~
26 ~~enterprise, such as the Federal National Mortgage Association,~~
27 ~~the Federal Home Loan Mortgage Corporation, or the Federal~~
28 ~~Agricultural Mortgage Corporation, the Federal Home Loan~~
29 ~~Bank, and other similar entities~~ **under terms that are** approved
30 by the authority;

31 (3) to purchase or participate in the purchase from mortgage
32 lenders of mortgage loans made to persons of low and moderate
33 income for residential housing;

34 (4) to make loans to mortgage lenders for the purpose of
35 furnishing funds to such mortgage lenders to be used for making
36 mortgage loans for persons and families of low and moderate
37 income. However, the obligation to repay loans to mortgage
38 lenders shall be general obligations of the respective mortgage
39 lenders and shall bear such date or dates, shall mature at such
40 time or times, shall be evidenced by such note, bond, or other
41 certificate of indebtedness, shall be subject to prepayment, and
42 shall contain such other provisions consistent with the purposes

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of this chapter as the authority shall by rule or resolution determine;

(5) to collect and pay reasonable fees and charges in connection with making, purchasing, and servicing of its loans, notes, bonds, commitments, and other evidences of indebtedness;

(6) to acquire real property, or any interest in real property, by conveyance, including purchase in lieu of foreclosure, or foreclosure, to own, manage, operate, hold, clear, improve, and rehabilitate such real property and sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber such real property where such use of real property is necessary or appropriate to the purposes of the authority;

(7) to sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction loan, a land development loan, a mortgage loan, or a loan of any type permitted by this chapter;

(8) to procure insurance against any loss in connection with its operations in such amounts and from such insurers as it may deem necessary or desirable;

(9) to consent, subject to the provisions of any contract with noteholders or bondholders which may then exist, whenever it deems it necessary or desirable in the fulfillment of its purposes to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any mortgage loan, mortgage loan commitment, construction loan, loan to lender, or contract or agreement of any kind to which the authority is a party;

(10) to enter into agreements or other transactions with any federal, state, or local governmental agency for the purpose of providing adequate living quarters for such persons and families in cities and counties where a need has been found for such housing;

(11) to include in any borrowing such amounts as may be deemed necessary by the authority to pay financing charges, interest on the obligations (for a period not exceeding the period of construction and a reasonable time thereafter or if the housing is completed, two (2) years from the date of issue of the obligations), consultant, advisory, and legal fees and such other expenses as are necessary or incident to such borrowing;

(12) to make and publish rules respecting its lending programs and such other rules as are necessary to effectuate the purposes of this chapter;

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(13) to provide technical and advisory services to sponsors, builders, and developers of residential housing and to residents and potential residents, including housing selection and purchase procedures, family budgeting, property use and maintenance, household management, and utilization of community resources;

(14) to promote research and development in scientific methods of constructing low cost residential housing of high durability;

(15) to encourage community organizations to participate in residential housing development;

(16) to make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, limited liability company, or other organization or entity necessary or convenient to accomplish the purposes of this chapter;

(17) to accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance and any other aid from any source whatsoever and to agree to, and to comply with, conditions attached thereto;

(18) to sue and be sued in its own name, plead and be impleaded;

(19) to maintain an office in the city of Indianapolis and at such other place or places as it may determine;

(20) to adopt an official seal and alter the same at pleasure;

(21) to adopt and from time to time amend and repeal bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules and policies in connection with the performance of its functions and duties;

(22) to employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor;

(23) notwithstanding IC 5-13, but subject to the requirements of any trust agreement entered into by the authority, to invest:

- (A) the authority's money, funds, and accounts;
- (B) any money, funds, and accounts in the authority's custody; and
- (C) proceeds of bonds or notes;

in the manner provided by an investment policy established by resolution of the authority;

(24) to make or participate in the making of construction loans, mortgage loans, or both, to individuals, partnerships, limited liability companies, corporations, and organizations for the

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1 construction of residential facilities for individuals with a
 2 developmental disability or for individuals with a mental illness
 3 or for the acquisition or renovation, or both, of a facility to make
 4 it suitable for use as a new residential facility for individuals with
 5 a developmental disability or for individuals with a mental illness;
 6 (25) to make or participate in the making of construction and
 7 mortgage loans to individuals, partnerships, corporations, limited
 8 liability companies, and organizations for the construction,
 9 rehabilitation, or acquisition of residential facilities for children;
 10 (26) to purchase or participate in the purchase of mortgage loans
 11 from:

12 (A) public utilities (as defined in IC 8-1-2-1); or

13 (B) municipally owned gas utility systems organized under
 14 IC 8-1.5;

15 if those mortgage loans were made for the purpose of insulating
 16 and otherwise weatherizing single family residences in order to
 17 conserve energy used to heat and cool those residences;

18 (27) to provide financial assistance to mutual housing
 19 associations (IC 5-20-3) in the form of grants, loans, or a
 20 combination of grants and loans for the development of housing
 21 for low and moderate income families;

22 (28) to service mortgage loans made or acquired by the authority
 23 and to impose and collect reasonable fees and charges in
 24 connection with such servicing;

25 (29) subject to the authority's investment policy, to enter into
 26 swap agreements (as defined in IC 8-9.5-9-4) in accordance with
 27 IC 8-9.5-9-5 and IC 8-9.5-9-7;

28 (30) to promote and foster community revitalization through
 29 community services and real estate development;

30 (31) to coordinate and establish linkages between governmental
 31 and other social services programs to ensure the effective delivery
 32 of services to low income individuals;

33 (32) to cooperate with local housing officials and plan
 34 commissions in the development of projects that the officials or
 35 commissions have under consideration;

36 (33) to take actions necessary to implement its powers that the
 37 authority determines to be appropriate and necessary to ensure the
 38 availability of state or federal financial assistance; and

39 (34) to administer any program or money designated by the state
 40 or available from the federal government or other sources that is
 41 consistent with the authority's powers and duties.

42 The omission of a power from the list in this subsection does not imply

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that the authority lacks that power. The authority may exercise any power that is not listed in this subsection but is consistent with the powers listed in this subsection to the extent that the power is not expressly denied by the Constitution of the State of Indiana or by another statute.

(b) The authority shall ~~structure and administer any program conducted~~ **ensure that a mortgage loan acquired by the authority under subsection (a)(3) or made by a mortgage lender with funds provided by the authority under subsection (a)(4) in order to assure that no mortgage loan shall is not knowingly be made to a person whose adjusted family income, shall exceed as determined by the authority, exceeds one hundred twenty-five percent (125%) of the median income for the geographic area within which the person resides and at least forty percent (40%) of the mortgage loans so financed shall be for persons whose adjusted family income shall be below eighty percent (80%) of the median income for such area. involved. However, if the authority determines that additional encouragement is needed for the development of the geographic area involved, a mortgage loan acquired or made under subsection (a)(3) or (a)(4) may be made to a person whose adjusted family income, as determined by the authority, does not exceed one hundred forty percent (140%) of the median income for the geographic area involved. The authority shall establish procedures that the authority determines are appropriate to structure and administer any program conducted under subsection (a)(3) or (a)(4) for the purpose of acquiring or making mortgage loans to persons of low or moderate income. In determining what constitutes low income, moderate income, or median income for purposes of any program conducted under subsection (a)(3) or (a)(4), the authority shall consider:**

- (1) the appropriate geographic area in which to measure income levels; and
- (2) the appropriate method of calculating low income, moderate income, or median income levels including:
 - (A) sources of;
 - (B) exclusions from; and
 - (C) adjustments to;
 income.

(c) In addition to the powers set forth in subsection (a), the authority may, with the proceeds of bonds and notes sold to retirement plans covered by IC 5-10-1.7, structure and administer a program of purchasing or participating in the purchasing from mortgage lenders of

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mortgage loans made to qualified members of retirement plans and other individuals. The authority shall structure and administer any program conducted under this subsection to assure that:

(1) each mortgage loan is made as a first mortgage loan for real property:

(A) that is a single family dwelling, including a condominium or townhouse, located in Indiana;

(B) for a purchase price of not more than ninety-five thousand dollars (\$95,000);

(C) to be used as the purchaser's principal residence; and

(D) for which the purchaser has made a down payment in an amount determined by the authority;

(2) no mortgage loan exceeds seventy-five thousand dollars (\$75,000);

(3) any bonds or notes issued which are backed by mortgage loans purchased by the authority under this subsection shall be offered for sale to the retirement plans covered by IC 5-10-1.7; and

(4) qualified members of a retirement plan shall be given preference with respect to the mortgage loans that in the aggregate do not exceed the amount invested by their retirement plan in bonds and notes issued by the authority that are backed by mortgage loans purchased by the authority under this subsection:

(d) As used in this section, "a qualified member of a retirement plan" means an active or retired member:

(1) of a retirement plan covered by IC 5-10-1.7 that has invested in bonds and notes issued by the authority that are backed by mortgage loans purchased by the authority under subsection (c); and

(2) who for a minimum of two (2) years preceding the member's application for a mortgage loan has:

(A) been a full-time state employee, teacher, judge, police officer, or firefighter;

(B) been a full-time employee of a political subdivision participating in the public employees' retirement fund;

(C) been receiving retirement benefits from the retirement plan; or

(D) a combination of employment and receipt of retirement benefits equaling at least two (2) years.

(e) (c) The authority, when directed by the governor, shall administer programs and funds under 42 U.S.C. 1437 et seq.

(f) (d) The authority shall identify, promote, assist, and fund home ownership education programs conducted throughout Indiana by

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nonprofit counseling agencies certified by the authority using funds appropriated under section 27 of this chapter. The attorney general and the entities listed in IC 4-6-12-4(a)(1) through IC 4-6-12-4(a)(10) shall cooperate with the authority in implementing this subsection.

SECTION 5. IC 5-20-1-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4.5. (a) As used in this section, ~~"person with a disability" means a person who, by reason of physical, mental, or emotional defect or infirmity, whether congenital or acquired by accident, injury, or disease, is totally or partially prevented from achieving the fullest attainable physical, social, economic, mental, and vocational participation in the normal process of living.~~ **"special needs populations" include the following:**

- (1) Persons with physical or developmental disabilities.**
- (2) Persons with mental impairments.**
- (3) Single parent households.**
- (4) Victims of domestic violence.**
- (5) Abused children.**
- (6) Persons with chemical addictions.**
- (7) Homeless persons.**
- (8) The elderly.**

(b) As used in this section, "qualified building" means a building:

- (1) that is used or will be used to provide residential housing for ~~persons with disabilities;~~ **special needs populations;** and
- (2) for which a taxpayer is eligible to claim a low income housing credit under 26 U.S.C. 42.

(c) Subject to subsection (d), the authority shall allocate to qualified buildings at least ten percent (10%) of the total dollar amount of federal low income housing credits allocated to the authority under 26 U.S.C. 42. The authority shall allocate credits under this section based on the proportionate amount of a qualified building that is used to provide residential housing for ~~persons with disabilities;~~ **special needs populations,** as determined by the authority.

(d) The authority shall hold available the allocation made under subsection (c) for qualified buildings through October 31 of each calendar year. Beginning November 1 of each calendar year, any part of the allocation that remains unassigned shall be available for any appropriate use under 26 U.S.C. 42.

SECTION 6. IC 5-20-1-8, AS AMENDED BY P.L.235-2005, SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) Subject to the approval of the ~~governor;~~ **public finance director appointed under IC 4-4-11-9,** the authority is hereby authorized to issue bonds or notes, or a combination thereof,

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to carry out and effectuate its purposes and powers. The principal of, and the interest on, such bonds or notes shall be payable solely from the funds provided for such payment in this chapter. The authority may secure the repayment of such bonds and notes by the pledge of mortgages and notes of others, revenues derived from operations and loan repayments, the proceeds of its bonds, and any available revenues or assets of the authority. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the authority, at such price or prices and under such terms and conditions as may be determined by the authority. Any such bonds or notes shall bear interest at such rate or rates as may be determined by the authority. Notes shall mature at such time or times not exceeding ten (10) years from their date or dates, and bonds shall mature at such time or times not exceeding forty-five (45) years from their date or dates, as may be determined by the authority. The authority shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or outside the state. In case any officer whose signature, or a facsimile of whose signature, shall appear on any bonds or notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if ~~he~~ **the person** had remained in office until such delivery. The authority may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the approval of a resolution of the authority authorizing the sale of its bonds or notes, such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the authority shall determine to be for the best interest of the authority and to best effectuate the purposes of this chapter.

(b) The proceeds of any bonds or notes shall be used solely for the purposes for which they are issued. The proceeds shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or notes or in the trust agreement securing the same.

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(c) Prior to the preparation of definitive bonds, the authority may, under like restrictions and subject to the approval of the ~~governor~~, **public finance director appointed under IC 4-4-11-9**, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(d) The authority shall cooperate with and use the assistance of the Indiana finance authority established under IC 4-4-11 in the issuance of the bonds or notes.

SECTION 7. IC 5-20-1-18, AS AMENDED BY P.L.235-2005, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. The authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the ~~governor~~, **public finance director appointed under IC 4-4-11-9**, the budget committee, and the general assembly. An annual report submitted under this section to the general assembly must be in an electronic format under IC 5-14-6. The report shall set forth a complete operating and financial statement of the authority during such year, and a copy of such report shall be available to inspection by the public at the Indianapolis office of the authority. The authority shall cause an audit of its books and accounts to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available money of the authority.

SECTION 8. IC 5-20-1-27, AS AMENDED BY P.L.181-2006, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 27. (a) The home ownership education account within the state general fund is established to support the home ownership education programs established under section ~~4(f)~~ **4(d)** of this chapter. The account is administered by the authority.

(b) The home ownership education account consists of fees collected under IC 24-9-9.

(c) The expenses of administering the home ownership education account shall be paid from money in the ~~fund~~, **account**.

(d) The treasurer of state shall invest the money in the home ownership education account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

SECTION 9. IC 5-20-3-4, AS AMENDED BY P.L.181-2006, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2008]: Sec. 4. (a) A mutual housing association may be established as a nonprofit corporation incorporated under IC 23-7-1.1 (before its repeal on August 1, 1991) or IC 23-17 to prevent and eliminate neighborhood deterioration and to preserve neighborhood stability by:

(1) providing high quality, long term housing for families of low and moderate income; and

(2) affording community and residential involvement in the provision of that housing.

(b) The articles of incorporation of a mutual housing association ~~must meet the requirements of the Indiana housing and community development authority under IC 5-20-1-6 and~~ must be approved by the authority.

(c) The articles of incorporation of a mutual housing association must include a provision that provides that if the mutual housing association dissolves, is involved in a bankruptcy proceeding, or otherwise disposes of its physical properties, the association may only transfer the assets to another entity that provides high quality long term housing for families of low and moderate income."

SECTION 10. IC 6-1.1-12-43 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 43. (a) For purposes of this section:

(1) "benefit" refers to:

(A) a deduction under section 1, 9, 11, 13, 14, 16, 17.4, 26, 29, 31, 33, or 34 of this chapter; or

(B) the homestead credit under IC 6-1.1-20.9-2;

(2) "closing agent" means a person that closes a transaction;

(3) "customer" means an individual who obtains a loan in a transaction; and

(4) "transaction" means a single family residential:

(A) first lien purchase money mortgage transaction; or

(B) refinancing transaction.

(b) Before closing a transaction after December 31, 2004, a closing agent must provide to the customer the form referred to in subsection (c).

(c) Before June 1, 2004, the department of local government finance shall prescribe the form to be provided by closing agents to customers under subsection (b). The department shall make the form available to closing agents, county assessors, county auditors, and county treasurers in hard copy and electronic form. County assessors, county auditors, and county treasurers shall make the form available to the general public. The form must:

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(1) on one (1) side:

(A) list each benefit;

(B) list the eligibility criteria for each benefit; and

(C) indicate that a new application for a deduction under section 1 of this chapter is required when residential real property is refinanced;

(2) on the other side indicate:

(A) each action by; and

(B) each type of documentation from;

the customer required to file for each benefit; and

(3) be printed in one (1) of two (2) or more colors prescribed by the department of local government finance that distinguish the form from other documents typically used in a closing referred to in subsection (b).

(d) A closing agent:

(1) may reproduce the form referred to in subsection (c);

(2) in reproducing the form, must use a print color prescribed by the department of local government finance; and

(3) is not responsible for the content of the form referred to in subsection (c) and shall be held harmless by the department of local government finance from any liability for the content of the form.

(e) This subsection applies to a transaction that is closed after December 31, 2009. In addition to providing the customer the form described in subsection (c) before closing the transaction, a closing agent shall do the following as soon as possible after the closing, and within the time prescribed by the department of insurance under IC 27-7-3-15.5:

(1) Input the information described in IC 27-7-3-15.5(b) into the system maintained by the department of insurance under IC 27-7-3-15.5.

(2) Submit the form described in IC 27-7-3-15.5(c) to the data base described in IC 27-7-3-15.5(c)(2)(B).

~~(e)~~ **(f)** A closing agent to which this section applies shall document ~~its~~ **the closing agent's** compliance with this section with respect to each transaction in the form of verification of compliance signed by the customer.

~~(f)~~ **(g)** A closing agent is subject to a civil penalty of twenty-five dollars (\$25) for each instance in which the closing agent fails to comply with this section with respect to a customer. The penalty:

(1) may be enforced by the state agency that has administrative jurisdiction over the closing agent in the same manner that the

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1 agency enforces the payment of fees or other penalties payable to
2 the agency; and

3 (2) shall be paid into the property tax replacement fund.

4 **(h)** A closing agent is not liable for any other damages claimed by
5 a customer because of:

6 **(1)** the closing agent's mere failure to provide the appropriate
7 document to the customer **under subsection (b); or**

8 **(2) with respect to a transaction that is closed after December**
9 **31, 2009, the closing agent's failure to input the information**
10 **or submit the form described in subsection (e).**

11 ~~(g)~~ **(i)** The state agency that has administrative jurisdiction over a
12 closing agent shall:

13 (1) examine the closing agent to determine compliance with this
14 section; and

15 (2) impose and collect penalties under subsection ~~(f)~~ **(g)**.

16 SECTION 11. IC 20-24-8-5, AS AMENDED BY P.L.2-2006,
17 SECTION 111, IS AMENDED TO READ AS FOLLOWS
18 [EFFECTIVE JULY 1, 2008]: Sec. 5. The following statutes and rules
19 and guidelines adopted under the following statutes apply to a charter
20 school:

- 21 (1) IC 5-11-1-9 (required audits by the state board of accounts).
- 22 (2) IC 20-39-1-1 (unified accounting system).
- 23 (3) IC 20-35 (special education).
- 24 (4) IC 20-26-5-10 and IC 20-28-5-9 (criminal history).
- 25 (5) IC 20-26-5-6 (subject to laws requiring regulation by state
26 agencies).
- 27 (6) IC 20-28-7-14 (void teacher contract when two (2) contracts
28 are signed).
- 29 (7) IC 20-28-10-12 (nondiscrimination for teacher marital status).
- 30 (8) IC 20-28-10-14 (teacher freedom of association).
- 31 (9) IC 20-28-10-17 (school counselor immunity).
- 32 (10) For conversion charter schools only, IC 20-28-6, IC 20-28-7,
33 IC 20-28-8, IC 20-28-9, and IC 20-28-10.
- 34 (11) IC 20-33-2 (compulsory school attendance).
- 35 (12) IC 20-33-3 (limitations on employment of children).
- 36 (13) IC 20-33-8-19, IC 20-33-8-21, and IC 20-33-8-22 (student
37 due process and judicial review).
- 38 (14) IC 20-33-8-16 (firearms and deadly weapons).
- 39 (15) IC 20-34-3 (health and safety measures).
- 40 (16) IC 20-33-9 (reporting of student violations of law).
- 41 (17) IC 20-30-3-2 and IC 20-30-3-4 (patriotic commemorative
42 observances).



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(18) IC 20-31-3, IC 20-32-4, IC 20-32-5, IC 20-32-6, IC 20-32-8, or any other statute, rule, or guideline related to standardized testing (assessment programs, including remediation under the assessment programs).

(19) IC 20-33-7 (parental access to education records).

(20) IC 20-31 (accountability for school performance and improvement).

(21) Beginning with the school year that begins in the calendar year beginning January 1, 2010, IC 20-30-5-19 (instruction concerning consumer transactions and personal financial responsibility).

SECTION 12. IC 20-30-5-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 19. (a) Beginning with the school year that begins in the calendar year beginning January 1, 2010, each school corporation (including each charter school) and each nonpublic school that voluntarily has become accredited under IC 20-19-2-8 shall include in its curriculum for all students in grades 9 through 12 instruction designed to:**

(1) increase students' awareness of certain consumer transactions, including mortgage transactions; and

(2) foster personal financial responsibility.

(b) A school corporation (including a charter school) and a nonpublic school that voluntarily has become accredited under IC 20-19-2-8 may meet the requirements of subsection (a) by:

(1) integrating the instruction described in subsection (a) in its required mathematics curriculum; or

(2) conducting a separate class or seminar that includes the instruction described in subsection (a).

(c) A person may not receive a high school diploma from a school subject to this section unless the person has received the instruction required by this section.

(d) The department, in collaboration with the department of financial institutions established by IC 28-11-1-1, shall develop guidelines and the state board shall adopt rules under IC 4-22-2 to assist teachers assigned to provide the instruction required by this section.

SECTION 13. IC 23-2-5-3, AS AMENDED BY P.L.230-2007, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 3. (a) As used in this chapter, "certificate of registration" means a certificate issued by the commissioner authorizing an individual to:**

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(1) engage in origination activities on behalf of a licensee; or

(2) act as a principal manager on behalf of a licensee.

~~(b)~~ As used in this chapter, "creditor" means a person:

(1) that loans funds of the person in connection with a loan; and

(2) to whom the loan is initially payable on the face of the note or contract evidencing the loan.

~~(c)~~ (b) As used in this chapter, "license" means a license issued by the commissioner authorizing a person to engage in the loan brokerage business.

~~(d)~~ (c) As used in this chapter, "licensee" means a person that is issued a license under this chapter.

~~(e)~~ (d) As used in this chapter, "loan broker" means any person who, in return for any consideration from any source procures, attempts to procure, or assists in procuring, a loan from a third party or any other person, whether or not the person seeking the loan actually obtains the loan. "Loan broker" does not include:

(1) any supervised financial organization (as defined in IC 24-4.5-1-301(20)), including a bank, savings bank, trust company, savings association, or credit union;

(2) any other financial institution that is:

(A) regulated by any agency of the United States or any state; and

(B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

(3) any insurance company; or

(4) any person arranging financing for the sale of the person's product; or

(5) a creditor that is licensed under IC 24-4.4-2-402.

~~(f)~~ (e) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

~~(g)~~ (f) As used in this chapter, "origination activities" means communication with or assistance of a borrower or prospective borrower in the selection of loan products or terms.

~~(h)~~ (g) As used in this chapter, "originator" means a person engaged in origination activities. The term "originator" does not include a person who performs origination activities for any entity that is not a loan broker under subsection ~~(e)~~ (d).

~~(i)~~ (h) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock

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company, or another group or entity, however organized.
 (i) As used in this chapter, "registrant" means an individual who is registered:

- (1) to engage in origination activities under this chapter; or
- (2) as a principal manager.

(j) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls ten percent (10%) or more of the equity interest in a loan broker licensed or required to be licensed under this chapter, regardless of whether the person owns or controls the equity interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

(k) As used in this chapter, "principal manager" means an individual who:

- (1) has at least three (3) years of experience:
 - (A) as a loan broker; or
 - (B) in financial services;
 that is acceptable to the commissioner; and
- (2) is principally responsible for the supervision and management of the employees and business affairs of a licensee.

(l) As used in this chapter, "personal information" includes any of the following:

- (1) An individual's first and last names or first initial and last name.
- (2) Any of the following data elements:
 - (A) A Social Security number.
 - (B) A driver's license number.
 - (C) A state identification card number.
 - (D) A credit card number.
 - (E) A financial account number or debit card number in combination with a security code, password, or access code that would permit access to the person's account.
- (3) With respect to an individual, any of the following:
 - (A) Address.
 - (B) Telephone number.
 - (C) Information concerning the individual's:
 - (i) income or other compensation;
 - (ii) credit history;
 - (iii) credit score;
 - (iv) assets;
 - (v) liabilities; or
 - (vi) employment history.
- (m) As used in this chapter, personal information is "encrypted"

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1 if the personal information:

2 (1) has been transformed through the use of an algorithmic
3 process into a form in which there is a low probability of
4 assigning meaning without use of a confidential process or
5 key; or

6 (2) is secured by another method that renders the personal
7 information unreadable or unusable.

8 (n) As used in this chapter, personal information is "redacted"
9 if the personal information has been altered or truncated so that
10 not more than the last four (4) digits of:

11 (1) a Social Security number;

12 (2) a driver's license number;

13 (3) a state identification number; or

14 (4) an account number;

15 are accessible as part of the personal information.

16 SECTION 14. IC 23-2-5-4, AS AMENDED BY P.L.230-2007,
17 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2008]: Sec. 4. (a) **A person may not engage in the loan
19 brokerage business in Indiana unless the person first obtains a
20 license from the commissioner.** Any person desiring to engage or
21 continue in the loan brokerage business shall apply to the
22 commissioner for a license under this chapter.

23 (b) **An individual may not perform origination activities in
24 Indiana on behalf of a person licensed or required to be licensed
25 under this chapter unless the individual first obtains a certificate
26 of registration from the commissioner.** An individual desiring ~~to be~~
27 ~~employed by a licensee~~ to engage in origination activities **on behalf of**
28 **a person licensed or required to be licensed under this chapter** shall
29 apply to the commissioner for registration under this chapter.

30 (c) **An individual may not act as a principal manager on behalf**
31 **of a person licensed or required to be licensed under this chapter**
32 **unless the individual first obtains a certificate of registration from**
33 **the commissioner.** Any individual desiring ~~to be employed by a~~
34 ~~licensee~~ **act as a principal manager on behalf of a person licensed or**
35 **required to be licensed under this chapter** shall apply to the
36 commissioner for registration under this chapter.

37 (d) **The commissioner may request evidence of compliance with**
38 **this section at any of the following times:**

39 (1) **The time of application for an initial:**

40 (A) license; or

41 (B) certificate of registration.

42 (2) **The time of renewal of a license or certificate of**

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1 registration.

2 (3) Any other time considered necessary by the commissioner.

3 (e) For purposes of subsection (d), evidence of compliance with
4 this section shall include a criminal background check, including
5 a national criminal history background check (as defined in
6 IC 10-13-3-12) by the Federal Bureau of Investigation.

7 SECTION 15. IC 23-2-5-5, AS AMENDED BY P.L.230-2007,
8 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2008]: Sec. 5. (a) An application for license or renewal of a
10 license must contain:

- 11 (1) consent to service of process under subsection (h);
- 12 (2) evidence of the bond required in subsection (e);
- 13 (3) an application fee of four hundred dollars (\$400), plus two
- 14 hundred dollars (\$200) for each ultimate equitable owner;
- 15 (4) an affidavit affirming that none of the applicant's ultimate
- 16 equitable owners, directors, managers, or officers have been
- 17 convicted, in any jurisdiction, of an offense involving fraud or
- 18 deception that is punishable by at least one (1) year of
- 19 imprisonment, unless waived by the commissioner under
- 20 subsection ~~(f)~~; (i);
- 21 (5) evidence that the applicant, if the applicant is an individual,
- 22 has completed the education requirements under section 21 of this
- 23 chapter;
- 24 (6) the name and registration number for each originator to be
- 25 employed by the licensee;
- 26 (7) the name and registration number for each principal manager;
- 27 and
- 28 (8) for each ultimate equitable owner, the following information:
- 29 ~~(1)~~ (A) The name of the ultimate equitable owner.
- 30 ~~(2)~~ (B) The address of the ultimate equitable owner, including
- 31 the home address of the ultimate equitable owner if the
- 32 ultimate equitable owner is an individual.
- 33 ~~(3)~~ (C) The telephone number of the ultimate equitable owner,
- 34 including the home telephone number if the ultimate equitable
- 35 owner is an individual.
- 36 ~~(4)~~ (D) The ultimate equitable owner's Social Security number
- 37 and date of birth, if the ultimate equitable owner is an
- 38 individual.

39 (b) An application for registration as an originator shall be made on
40 a registration form prescribed by the commissioner. The application
41 must include the following information for the individual that seeks to
42 be registered as an originator:

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- (1) The name of the individual.
- (2) The home address of the individual.
- (3) The home telephone number of the individual.
- (4) The individual's Social Security number and date of birth.
- (5) The name of the:
 - (A) licensee; or
 - (B) applicant for licensure;
 for whom the individual seeks to be employed as an originator.
- (6) Consent to service of process under subsection (h).
- (7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.
- (8) An application fee of one hundred dollars (\$100).
- (9) All registration numbers previously issued to the individual under this chapter, if applicable.

(c) An application for registration as a principal manager shall be made on a registration form prescribed by the commissioner. The application must include the following information for the individual who seeks to be registered as a principal manager:

- (1) The name of the individual.
- (2) The home address of the individual.
- (3) The home telephone number of the individual.
- (4) The individual's Social Security number and date of birth.
- (5) The name of the:
 - (A) licensee; or
 - (B) applicant for licensure;
 for whom the individual seeks to be employed as a principal manager.
- (6) Consent to service of process under subsection (h).
- (7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.
- (8) Evidence that the individual has at least three (3) years of experience in the:
 - (A) loan brokerage; or
 - (B) financial services;
 business.
- (9) An application fee of two hundred dollars (\$200).
- (10) All registration numbers previously issued to the individual, if applicable.

(d) The commissioner shall require an applicant for registration as:

- (1) an originator under subsection (b); or
- (2) a principal manager under subsection (c);

to pass a written examination prepared and administered by the

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commissioner or an agent appointed by the commissioner.

(e) A licensee must maintain a bond satisfactory to the commissioner in the amount of ~~fifty~~ **one hundred** thousand dollars (~~\$50,000~~), (**\$100,000**), which shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee.

(f) The commissioner shall issue a license and license number to an applicant that meets the licensure requirements of this chapter. Whenever the registration provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration and registration number authorizing the registrant to:

(1) engage in origination activities; or

(2) act as a principal manager;

whichever applies.

(g) Licenses and initial certificates of registration issued by the commissioner are valid until January 1 of the second year after issuance.

(h) Every applicant for licensure or registration or for renewal of a license or a registration shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

(i) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

(j) Whenever an initial or a renewal application for a license or registration is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

(k) The commissioner shall require each:

(1) equitable owner; ~~and~~

(2) individual described in subsection (a)(4); and

~~(2) (3)~~ **(3)** applicant for registration as:

(A) an originator; or

(B) a principal manager;

to ~~undergo~~ **submit fingerprints for a national criminal history background check at the expense of the (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the commissioner in determining whether the equitable owner, the individual described in subsection (a)(4), or the applicant should be**

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1 **denied licensure or registration under this chapter for any reason**
 2 **set forth in section 10(c) of this chapter. The equitable owner,**
 3 **individual described in subsection (a)(4), or applicant shall pay any**
 4 **fees or costs associated with the fingerprints and background check**
 5 **required under this subsection. The commissioner may not release**
 6 **the results of a background check described in this subsection to**
 7 **any private entity.**

8 (l) The commissioner may check the qualifications, background,
 9 licensing status, and service history of each:

10 (1) equitable owner; ~~and~~

11 **(2) individual described in subsection (a)(4); and**

12 ~~(2) (3)~~ applicant for registration as:

13 (A) an originator; or

14 (B) a principal manager;

15 by accessing, upon availability, a multistate automated licensing system
 16 for mortgage brokers and originators, including the National Mortgage
 17 Licensing Database proposed by the Conference of State Bank
 18 Supervisors and the American Association of Residential Mortgage
 19 Regulators; **and repository described in section 11(a)(16) of this**
 20 **chapter. The equitable owner, the individual described in subsection**
 21 **(a)(4), or the applicant shall pay any fees or costs associated with a**
 22 **check conducted under this subsection.**

23 SECTION 16. IC 23-2-5-6 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. A licensee may not
 25 continue engaging in the loan brokerage business unless the licensee's
 26 license is renewed biennially. A registrant may not continue:

27 (1) engaging in origination activities; **or**

28 **(2) acting as a principal manager;**

29 unless the registrant's certificate of registration is renewed biennially.
 30 A licensee shall renew its license ~~and the certificates of registration of~~
 31 ~~its registrant employees~~ by filing with the commissioner, at least thirty
 32 (30) days before the expiration of the ~~registration, license,~~ an
 33 application containing any information the commissioner may require
 34 to indicate any material change from the information contained in the
 35 applicant's original application or any previous application. **A**
 36 **registrant may renew the registrant's certificate of registration by**
 37 **filing with the commissioner, at least thirty (30) days before the**
 38 **expiration of the registration, an application containing any**
 39 **information the commissioner may require to indicate any material**
 40 **change from the information contained in the applicant's original**
 41 **application or any previous application.**

42 SECTION 17. IC 23-2-5-10, AS AMENDED BY P.L.230-2007,

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SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or a practice constituting a violation of this chapter or a rule or an order under this chapter, the commissioner may investigate and may issue, with a prior hearing if there exists no substantial threat of immediate irreparable harm or without a prior hearing, if there exists a substantial threat of immediate irreparable harm, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter.

(b) Upon the issuance of an order or notice without a prior hearing by the commissioner under subsection (a), the commissioner shall promptly notify the respondent and, if the subject of the order or notice is a registrant, the licensee for whom the registrant is employed:

- (1) that the order or notice has been issued;
- (2) of the reasons the order or notice has been issued; and
- (3) that upon the receipt of a written request the matter will be set down for a hearing to commence within fifteen (15) business days after receipt of the request unless the respondent consents to a later date.

If a hearing is not requested and not ordered by the commissioner, an order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(c) The commissioner may deny **an application for an initial or a renewal license or registration, and may** suspend or revoke the license of a licensee or the registration of a registrant if **the applicant,** the licensee, the registrant, or an ultimate equitable owner of **an applicant or of** a licensee:

- (1) fails to maintain the bond required under section 5 of this chapter;
- (2) has, within the most recent ten (10) years:
 - (A) been the subject of an adjudication or a determination by:
 - (i) a court with jurisdiction; or
 - (ii) an agency or administrator that regulates securities, commodities, banking, financial services, insurance, real estate, or the real estate appraisal industry;

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- 1 in Indiana or in any other jurisdiction; and
 2 (B) been found, after notice and opportunity for hearing, to
 3 have violated the securities, commodities, banking, financial
 4 services, insurance, real estate, or real estate appraisal laws of
 5 Indiana or any other jurisdiction;
 6 (3) has:
 7 (A) been denied the right to do business in the securities,
 8 commodities, banking, financial services, insurance, real
 9 estate, or real estate appraisal industry; or
 10 (B) had the person's authority to do business in the securities,
 11 commodities, banking, financial services, insurance, real
 12 estate, or real estate appraisal industry revoked or suspended;
 13 by Indiana or by any other state, federal, or foreign governmental
 14 agency or self regulatory organization;
 15 (4) is insolvent;
 16 (5) has violated any provision of this chapter;
 17 (6) has knowingly filed with the commissioner any document or
 18 statement that:
 19 (A) contains a false representation of a material fact;
 20 (B) fails to state a material fact; or
 21 (C) contains a representation that becomes false after the filing
 22 but during the term of a license or certificate of registration as
 23 provided in subsection (i);
 24 (7) has:
 25 (A) been convicted, within ten (10) years before the date of the
 26 application, renewal, or review, of any crime involving fraud
 27 or deceit; or
 28 (B) had a felony conviction (as defined in IC 35-50-2-1(b))
 29 within five (5) years before the date of the application,
 30 renewal, or review;
 31 (8) if the person is a licensee or principal manager, has failed to
 32 reasonably supervise the person's originators or employees to
 33 ensure their compliance with this chapter;
 34 (9) is on the most recent tax warrant list supplied to the
 35 commissioner by the department of state revenue; or
 36 (10) has engaged in dishonest or unethical practices in the loan
 37 broker business, as determined by the commissioner.
 38 (d) The commissioner may do either of the following:
 39 (1) Censure:
 40 (A) a licensee;
 41 (B) an officer, a director, or an ultimate equitable owner of a
 42 licensee;

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- 1 (C) a registrant; or
 2 (D) any other person;
 3 who violates or causes a violation of this chapter.
 4 (2) Permanently bar any person described in subdivision (1) from
 5 being:
 6 (A) licensed or registered under this chapter; or
 7 (B) employed by or affiliated with a person licensed or
 8 registered under this chapter;
 9 if the person violates or causes a violation of this chapter.
 10 (e) The commissioner may not enter a final order:
 11 (1) denying, suspending, or revoking the license of a licensee or
 12 the registration of a registrant; or
 13 (2) imposing other sanctions;
 14 without prior notice to all interested parties, opportunity for a hearing,
 15 and written findings of fact and conclusions of law. However, the
 16 commissioner may by summary order deny, suspend, or revoke a
 17 license or certificate of registration pending final determination of any
 18 proceeding under this section or before any proceeding is initiated
 19 under this section. Upon the entry of a summary order, the
 20 commissioner shall promptly notify all interested parties that the
 21 summary order has been entered, of the reasons for the summary order,
 22 and that upon receipt by the commissioner of a written request from a
 23 party, the matter will be set for hearing to commence within fifteen
 24 (15) business days after receipt of the request. If no hearing is
 25 requested and none is ordered by the commissioner, the order remains
 26 in effect until it is modified or vacated by the commissioner. If a
 27 hearing is requested or ordered, the commissioner, after notice of the
 28 hearing has been given to all interested persons and the hearing has
 29 been held, may modify or vacate the order or extend it until final
 30 determination.
 31 (f) IC 4-21.5 does not apply to a proceeding under this section.
 32 (g) If a registrant seeks to transfer the registrant's registration to
 33 another licensee who desires to have the registrant engage in
 34 origination activities or serve as a principal manager, whichever
 35 applies, the registrant shall, before the registrant conducts origination
 36 activities or serves as a principal manager for the new employer,
 37 submit to the commissioner, on a form prescribed by the commissioner,
 38 a registration application, as required by section 5 of this chapter.
 39 (h) If the employment of a registrant is terminated, whether:
 40 (1) voluntarily by the registrant; or
 41 (2) by the licensee employing the registrant;
 42 the licensee that employed the registrant shall, not later than five (5)

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1 days after the termination, notify the commissioner of the termination
2 and the reasons for the termination.

3 (i) If a material fact or statement included in an application under
4 this chapter changes after the application has been submitted, the
5 applicant shall provide written notice to the commissioner of the
6 change. The commissioner may revoke or refuse to renew the license
7 or registration of any person who:

8 (1) is required to submit a written notice under this subsection
9 and fails to provide the required notice within two (2) business
10 days after the person discovers or should have discovered the
11 change; or

12 (2) would not qualify for licensure or registration under this
13 chapter as a result of the change in a material fact or statement.

14 SECTION 18. IC 23-2-5-11, AS AMENDED BY P.L.48-2006,
15 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2008]: Sec. 11. (a) The commissioner may do the following:

17 (1) Adopt rules under IC 4-22-2 to implement this chapter.

18 (2) Make investigations and examinations:

19 (A) in connection with any application for licensure or for
20 registration of a licensee or registrant or with any license or
21 certificate of registration already granted; or

22 (B) whenever it appears to the commissioner, upon the basis
23 of a complaint or information, that reasonable grounds exist
24 for the belief that an investigation or examination is necessary
25 or advisable for the more complete protection of the interests
26 of the public.

27 (3) Charge as costs of investigation or examination all reasonable
28 expenses, including a per diem prorated upon the salary of the
29 commissioner or employee and actual traveling and hotel
30 expenses. All reasonable expenses are to be paid by the party or
31 parties under investigation or examination if the party has violated
32 this chapter.

33 (4) Issue notices and orders, including cease and desist notices
34 and orders, after making an investigation or examination under
35 subdivision (2). The commissioner may also bring an action on
36 behalf of the state to enjoin a person from violating this chapter.
37 The commissioner shall notify the person that an order or notice
38 has been issued, the reasons for it, and that a hearing will be set
39 within fifteen (15) days after the commissioner receives a written
40 request from the person requesting a hearing.

41 (5) Sign all orders, official certifications, documents, or papers
42 issued under this chapter or delegate the authority to sign any of

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those items to a deputy.

(6) Hold and conduct hearings.

(7) Hear evidence.

(8) Conduct inquiries with or without hearings.

(9) Receive reports of investigators or other officers or employees of the state of Indiana or of any municipal corporation or governmental subdivision within the state.

(10) Administer oaths, or cause them to be administered.

(11) Subpoena witnesses, and compel them to attend and testify.

(12) Compel the production of books, records, and other documents.

(13) Order depositions to be taken of any witness residing within or without the state. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner.

(14) Order that each witness appearing under the commissioner's order to testify before the commissioner shall receive the fees and mileage allowances provided for witnesses in civil cases.

(15) Provide interpretive opinions or issue determinations that the commissioner will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. The commissioner may adopt rules to establish fees for individuals requesting an interpretive opinion or a determination under this subdivision. A person may not request an interpretive opinion or a determination concerning an activity that:

(A) occurred before; or

(B) is occurring on;

the date the opinion or determination is requested.

(16) Subject to subsection (f), designate a multistate automated licensing system and repository, established and operated by a third party, to serve as the sole entity responsible for:

(A) processing applications for:

(i) licenses and certificates of registration under this chapter; and

(ii) renewals of licenses and certificates of registration under this chapter; and

(B) performing other services that the commissioner determines are necessary for the orderly administration of the division's licensing and registration system.

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A multistate automated licensing system and repository described in this subdivision may include the National Mortgage Licensing System established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The commissioner may take any action necessary to allow the division to participate in a multistate automated licensing system and repository.

(b) If a witness, in any hearing, inquiry, or investigation conducted under this chapter, refuses to answer any question or produce any item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use immunity to the witness. Upon written request of the commissioner, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

(1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and

(2) the witness must answer the questions asked and produce the items requested.

A grant of use immunity does not prohibit evidence that the witness gives in a hearing, investigation, or inquiry from being used in a prosecution for perjury under IC 35-44-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

(c) In any prosecution, action, suit, or proceeding based upon or arising out of this chapter, the commissioner may sign a certificate showing compliance or noncompliance with this chapter by any person. This shall constitute prima facie evidence of compliance or noncompliance with this chapter and shall be admissible in evidence in any action at law or in equity to enforce this chapter.

(d) If:

(1) a person disobeys any lawful:

(A) subpoena issued under this chapter; or

(B) order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or

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information as provided in this chapter; or

(2) a witness refuses to:

(A) appear when subpoenaed;

(B) testify to any matter about which the witness may be lawfully interrogated; or

(C) take or subscribe to any oath required by this chapter;

the circuit or superior court of the county in which the hearing, inquiry, or investigation in question is held, if demand is made or if, upon written petition, the production is ordered to be made, or the commissioner or a hearing officer appointed by the commissioner, shall compel compliance with the lawful requirements of the subpoena, order, or demand, compel the production of the necessary or required books, papers, records, documents, and other evidence and information, and compel any witness to attend in any Indiana county and to testify to any matter about which the witness may lawfully be interrogated, and to take or subscribe to any oath required.

(e) If a person fails, refuses, or neglects to comply with a court order under this section, the person shall be punished for contempt of court.

(f) The commissioner's authority to designate a multistate automated licensing system and repository under subsection (a)(16) is subject to the following:

(1) The commissioner may not require any person exempt from licensure or registration under this chapter, or any employee or agent of an exempt person, to:

(A) submit information to; or

(B) participate in;

the multistate automated licensing system and repository.

(2) The commissioner may require a person required under this chapter to submit information to the multistate automated licensing system and repository to pay a processing fee considered reasonable by the commissioner.

SECTION 19. IC 23-2-5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. (a) Each loan broker agreement shall be given an account number. Each ~~licensee~~ **person licensed or required to be licensed under this chapter** shall keep and maintain the following records or their electronic equivalent:

(1) A file for each borrower or proposed borrower that contains the following:

(A) The name and address of the borrower or any proposed borrower.

(B) A copy of the signed loan broker agreement.

(C) A copy of any other papers or instruments used in

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- 1 connection with the loan broker agreement and signed by the
 2 borrower or any proposed borrower.
- 3 (D) If a loan was obtained for the borrower, the name and
 4 address of the creditor.
- 5 (E) If a loan is accepted by the borrower, a copy of the loan
 6 agreement.
- 7 (F) The amount of the loan broker's fee that the borrower has
 8 paid. If there is an unpaid balance, the status of any collection
 9 efforts.
- 10 (2) All receipts from or for the account of borrowers or any
 11 proposed borrowers and all disbursements to or for the account of
 12 borrowers or any proposed borrowers, recorded so that the
 13 transactions are readily identifiable.
- 14 (3) A general ledger that shall be posted at least monthly, and a
 15 trial balance sheet and profit and loss statement prepared within
 16 thirty (30) days of the commissioner's request for the information.
- 17 (4) A sample of:
- 18 (A) all advertisements, pamphlets, circulars, letters, articles,
 19 or communications published in any newspaper, magazine, or
 20 periodical;
- 21 (B) scripts of any recording, radio, or television
 22 announcement; and
- 23 (C) any sales kits or literature;
 24 to be used in solicitation of borrowers.
- 25 (b) The records listed in subsection (a) shall be kept for a period of
 26 two (2) years in the ~~licensee's~~ **loan broker's** principal office and must
 27 be separate or readily identifiable from the records of any other
 28 business that is conducted in the office of the loan broker.
- 29 **(c) If a breach of the security of any records:**
- 30 **(1) maintained by a loan broker under this section; and**
- 31 **(2) containing the unencrypted, unredacted personal**
 32 **information of one (1) or more borrowers or prospective**
 33 **borrowers;**
- 34 **occurs, the loan broker is subject to the disclosure requirements**
 35 **under IC 24-4.9-3, unless the loan broker is exempt from the**
 36 **disclosure requirements under IC 24-4.9-3-4.**
- 37 **(d) A person who is:**
- 38 **(1) licensed or required to be licensed under this chapter; or**
 39 **(2) registered or required to be registered under this chapter;**
 40 **may not dispose of the unencrypted, unredacted personal**
 41 **information of one (1) or more borrowers or prospective**
 42 **borrowers without first shredding, incinerating, mutilating,**

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erasing, or otherwise rendering the information illegible or unusable.

SECTION 20. IC 23-2-5-19, AS AMENDED BY P.L.230-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. (a) The following persons are exempt from the requirements of sections 4, 5, 6, 9, 17, 18, and 21 of this chapter:

(1) Any attorney while engaging in the practice of law.

(2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).

~~(3) Any person licensed as a real estate broker or salesperson under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.~~

~~(4)~~ (3) Any broker-dealer, agent, or investment advisor registered under IC 23-19.

~~(5)~~ (4) Any person that:

(A) procures;

(B) promises to procure; or

(C) assists in procuring;

a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).

~~(6)~~ (5) Any community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from the Indiana housing and community development authority established by IC 5-20-1-3.

~~(7)~~ (6) The Indiana housing and community development authority.

(8) Subject to subsection (e), and except as provided in subsection (f), any person authorized to:

(A) sell and service a loan for the Federal National Mortgage Association or the Federal Home Loan Mortgage Association;

(B) issue securities backed by the Government National Mortgage Association;

(C) make loans insured by the United States Department of Housing and Urban Development or the United States Department of Agriculture Rural Housing Service;

(D) act as a supervised lender or nonsupervised automatic lender of the United States Department of Veterans Affairs; or

(E) act as a correspondent of loans insured by the United States Department of Housing and Urban Development; if the

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1 person closes at least twenty-five (25) such insured loans in
 2 Indiana during each calendar year

3 (9) Any person who is a creditor, or proposed to be a creditor, for
 4 any loan;

5 (b) As used in this chapter, "bona fide third party fee" includes fees
 6 for the following:

7 (1) Credit reports, investigations, and appraisals performed by a
 8 person who holds a license or certificate as a real estate appraiser
 9 under IC 25-34.1-8.

10 (2) If the loan is to be secured by real property, title examinations,
 11 an abstract of title, title insurance, a property survey, and similar
 12 purposes.

13 (3) The services provided by a loan broker in procuring possible
 14 business for a lending institution if the fees are paid by the
 15 lending institution.

16 (c) As used in this section, "successful procurement of a loan"
 17 means that a binding commitment from a creditor to advance money
 18 has been received and accepted by the borrower.

19 (d) The burden of proof of any exemption or classification provided
 20 in this chapter is on the party claiming the exemption or classification.

21 (e) A person claiming an exemption under subsection (a)(8) shall,
 22 as a condition to receiving or maintaining the exemption, file a notice
 23 every twenty-four (24) months on a form acceptable to the
 24 commissioner. The notice required under this subsection must:

25 (1) provide the name and business address of each originator
 26 employed by the person to originate loans in Indiana;

27 (2) include all other information required by the commissioner;
 28 and

29 (3) be accompanied by a fee of four hundred dollars (\$400);

30 If any information included in a notice under this subsection changes
 31 after the notice has been submitted, the person shall provide written
 32 notice to the commissioner of the change. The commissioner's receipt
 33 of a notice under this subsection shall not be considered to be a
 34 determination or confirmation by the commissioner of the validity of
 35 the claimed exemption.

36 (f) An exemption described in subsection (a)(8) does not extend to:

37 (1) a subsidiary of the exempt person; or

38 (2) an unaffiliated third party.

39 An exemption that applies to a person under subsection (a)(8)(D) does
 40 not extend to a registered United States Department of Veterans Affairs
 41 agent.

42 SECTION 21. IC 23-2-5-20 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 20. (a) A person shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:

- (1) Employ any device, scheme, or artifice to defraud.
- (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.
- (3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.
- (4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a loan until the loan has been closed.
- (5) Receive any funds if the person knows that the funds were generated as a result of a fraudulent act.**
- (6) File or cause to be filed with a county recorder any document that the person knows:**
 - (A) contains:**
 - (i) a misstatement; or**
 - (ii) an untrue statement;**
 - of a material fact; or**
 - (B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.**
- (7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers, unless the personal information is:**
 - (A) included as part of:**
 - (i) an application form; or**
 - (ii) a document that is used in connection with an application process or an enrollment process;**
 - (B) used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit; or**
 - (C) used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.**
- However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.**
- (8) Engage in any reckless or negligent activity allowing the**

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release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Recommend a loan to, or procure a loan on behalf of, a prospective borrower without first conducting a reasonable inquiry concerning the prospective borrower's ability to repay the loan. For purposes of this subdivision, a person conducts a reasonable inquiry concerning a borrower's ability to repay a loan if the person:

(A) obtains a consumer report (as defined in IC 24-5-24-2) or other information maintained by a consumer reporting agency (as defined in IC 24-5-24-3) with respect to the prospective borrower; and

(B) obtains information about the prospective borrower through:

(i) a current or past employer of the prospective borrower;

(ii) public records; or

(ii) any other legal or commercially reasonable means.

(b) A person who commits an act described in subsection (a) is subject to sections 10, 14, 15, and 16 of this chapter.

SECTION 22. IC 23-2-5-22, AS ADDED BY P.L.48-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 22. (a) An appeal may be taken by:

(1) any ~~loan broker or principal upon~~ person whose application for ~~registration for a loan broker~~ **an initial or a renewal** license **under this chapter** is granted or denied, from any final order of the commissioner concerning the application; ~~or registration;~~

(2) any applicant for **initial or renewed** registration as a ~~loan broker principal manager~~ **an originator**, from any final order of the commissioner affecting the application; ~~or registration as a loan broker or originator;~~

(3) any person against whom a civil penalty is imposed under section 14(a) of this chapter, from the final order of the commissioner imposing the civil penalty; or

(4) any person who is named as a respondent, from any final order issued by the commissioner under section 10 or 11 of this chapter; to the Marion circuit court or to the circuit or superior court of the county where the person taking the appeal resides or maintains a place of business.

(b) Not later than twenty (20) days after the entry of the order, the

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commissioner shall be served with:

(1) a written notice of the appeal stating the court to which the appeal will be taken and the grounds upon which a reversal of the final order is sought;

(2) a demand in writing from the appellant for a certified transcript of the record and of all papers on file in the commissioner's office affecting or relating to the order; and

(3) a bond in the penal sum of five hundred dollars (\$500) to the state of Indiana with sufficient surety to be approved by the commissioner, conditioned upon the faithful prosecution of the appeal to final judgment and the payment of all costs that are adjudged against the appellant.

(c) Not later than ten (10) days after the commissioner is served with the items listed in subsection (b), the commissioner shall make, certify, and deliver to the appellant the transcript, and the appellant shall, not later than five (5) days after the date the appellant receives the transcript, file the transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal serves as the appellant's complaint. The commissioner may appear and file any motion or pleading and form the issue. The cause shall be entered on the trial calendar for trial de novo and given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent oral or written evidence concerning the order of the commissioner from which the appeal is taken. If the order of the commissioner is reversed, the court shall in its mandate specifically direct the commissioner as to the commissioner's further action in the matter. The commissioner is not barred from revoking or altering the order for any proper cause that accrues or is discovered after the order is entered. If the order is affirmed, the appellant is not barred after thirty (30) days from the date the order is affirmed from filing a new application if the application is not otherwise barred or limited. During the pendency of the appeal, the order from which the appeal is taken is not suspended but remains in effect unless otherwise ordered by the court. An appeal may be taken from the judgment of the court on the same terms and conditions as an appeal is taken in civil actions.

SECTION 23. IC 24-4.4 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]:

ARTICLE 4.4. FIRST LIEN MORTGAGE LENDING

Chapter 1. General Provisions and Definitions

Sec. 101. This article shall be known and may be cited as the

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First Lien Mortgage Lending Act.

Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

- (a) to permit and encourage the development of fair and economically sound first lien mortgage lending practices; and**
- (b) to conform the regulation of first lien mortgage lending practices to applicable state and federal laws, rules, and regulations.**

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted under this article.

(4) A reference to a federal law in this article is a reference to the law in effect December 31, 2008.

Sec. 103. This article:

- (1) is a general act intended as a unified coverage of its subject matter; and**
- (2) any part of this article may not be considered to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.**

Sec. 104. The provisions of this article are severable, so that if:

- (1) any provisions of this article; or**
- (2) the application of this article to any person or circumstances;**

is held invalid, the invalidity does not affect other provisions or applications of this article that can be given effect without the invalid provision or application.

Sec. 201. (1) Except as provided in subsection (2), this article applies to a first lien mortgage transaction:

- (a) that is secured by an interest in land in Indiana; and**
- (b) the closing for which takes place after December 31, 2008.**

(2) This article does not apply to a first lien mortgage transaction if:

- (a) the debtor is not a resident of Indiana at the time the transaction is entered into; and**
- (b) the laws of the debtor's state of residence requires that the transaction be made under the laws of the state of the debtor's residence.**

Sec. 202. This article does not apply to the following:

- (1) Extensions of credit to government or governmental agencies or instrumentalities.**
- (2) A first lien mortgage transaction in which the debt is**

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1 incurred primarily for a purpose other than a personal,
2 family, or household purpose

3 (3) An extension of credit primarily for a business, a
4 commercial, or an agricultural purpose.

5 (4) A first lien mortgage transaction made:

6 (a) in compliance with the requirements of; and

7 (b) by a community development corporation (as defined
8 in IC 4-4-28-2) acting as a subrecipient of funds from;
9 the Indiana housing and community development authority
10 established by IC 5-20-1-3.

11 (5) A supervised financial organization.

12 (6) An operating subsidiary that is majority owned, directly
13 or indirectly, by a supervised financial organization to the
14 extent the operating subsidiary is regulated by the chartering
15 authority of the supervised financial organization.

16 (7) A credit union service organization that is majority owned,
17 directly or indirectly, by one (1) or more credit unions.

18 (8) Agencies, instrumentalities, and government owned
19 corporations of the United States, including United States
20 government sponsored enterprises.

21 Sec. 203. Any civil court in Indiana may exercise jurisdiction
22 over any creditor with respect to any conduct in Indiana governed
23 by this article or with respect to any claim arising from a
24 transaction subject to this article. In addition to any other method
25 provided by rule or by statute, personal jurisdiction over a creditor
26 may be acquired in a civil action or proceeding instituted in any
27 civil court by the service of process.

28 Sec. 301. In addition to definitions appearing in subsequent
29 chapters of this article, the following definitions apply throughout
30 this article:

31 (1) "Credit" means the right granted by a creditor to a debtor
32 to defer payment of debt or to incur debt and defer its
33 payment.

34 (2) "Creditor" means a person:

35 (a) that regularly engages in the extension of first lien
36 mortgage transactions that are subject to a credit service
37 charge or loan finance charge, as applicable, or are
38 payable by written agreement in more than four (4)
39 installments (not including a down payment); and

40 (b) to which the obligation is initially payable, either on the
41 face of the note or contract, or by agreement if there is not
42 a note or contract.

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The term does not include a person described in subsection (13)(a) in a tablefunded transaction.

(3) "Department" refers to the members of the department of financial institutions.

(4) "Director" refers to the director of the department of financial institutions.

(5) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

(a) condominium unit;

(b) cooperative unit;

(c) mobile home; or

(d) trailer;

that is used as a residence.

(6) "First lien mortgage transaction" means a loan in which a first mortgage, or a land contract which constitutes a first lien, is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(7) "Loan" includes:

(a) the creation of debt by:

(i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or

(ii) the extension of credit by a person who regularly engages as a seller in credit transactions primarily secured by an interest in land;

(b) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and

(c) the forbearance of debt arising from a loan.

(8) "Payable in installments", with respect to a debt or an obligation, means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(9) "Person" includes an individual or an organization.

(10) A person is "regularly engaged" as a creditor in first lien mortgage transactions in Indiana if:

(a) the person acted as a creditor in first lien mortgage transactions in Indiana more than five (5) times in the preceding calendar year; or

(b) the person did not meet the numerical standards set

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1 forth in subdivision (a) in the preceding calendar year, but
 2 has or will meet the numerical standards set forth in
 3 subdivision (a) in the current calendar year.

4 (11) "Revolving first lien mortgage transaction" means an
 5 arrangement between a creditor and a debtor in which:

6 (a) the creditor permits the debtor to obtain advances from
 7 time to time;

8 (b) the unpaid balances of principal, credit service charges
 9 or loan finance charges, and other appropriate charges are
 10 debited to an account; and

11 (c) the debtor has the privilege of paying the balances in
 12 installments.

13 (12) "Supervised financial organization" means a person that
 14 is:

15 (a) organized, chartered, or holding an authorization
 16 certificate under the laws of a state or of the United States
 17 which authorizes the person to make loans and to receive
 18 deposits, including deposits into a savings, share,
 19 certificate, or deposit account; and

20 (b) subject to supervision by an official or agency of a state
 21 or of the United States.

22 (13) "Tablefunded" means a transaction in which:

23 (a) a person closes a first lien mortgage transaction in the
 24 person's own name as a mortgagee with funds provided by
 25 one (1) or more other persons; and

26 (b) the transaction is assigned simultaneously to the
 27 mortgage creditor providing the funding not later than one
 28 (1) business day after the funding of the transaction.

29 Chapter 2. Miscellaneous

30 Sec. 101. This chapter shall be known and may be cited as the
 31 First Lien Mortgage Lending Act - Miscellaneous.

32 Sec. 201. (1) A creditor or mortgage servicer shall provide an
 33 accurate payoff amount for a first lien mortgage transaction to the
 34 debtor not later than ten (10) calendar days after the creditor or
 35 mortgage servicer receives the debtor's written request for the
 36 accurate payoff amount. A creditor or mortgage servicer who fails
 37 to provide an accurate payoff amount is liable for:

38 (a) one hundred dollars (\$100) if an accurate payoff amount
 39 is not provided by the creditor or mortgage servicer not later
 40 than ten (10) calendar days after the creditor or mortgage
 41 servicer receives the debtor's first written request; and

42 (b) the greater of:

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(i) one hundred dollars (\$100); or
 (ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate payoff amount is provided; if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer fails to comply with subdivision (a).

(2) This subsection applies to a first lien mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least ten (10) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than twenty (20) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a first lien mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the first lien mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable:

- (a) under the terms set forth in subsection (1), as if the creditor or mortgage servicer had failed to provide a first lien mortgage transaction payoff amount; and
- (b) in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

Sec. 301. (1) A violation of a state or federal law, regulation, or rule applicable to first lien mortgage transactions is a violation of this article.

(2) The department may enforce penalty provisions set forth in 15 U.S.C. 1640 for violations of disclosure requirements applicable to first lien mortgage transactions.

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1 **Sec. 401. Unless a person subject to this article has first obtained**
 2 **a license from the department, the person shall not regularly**
 3 **engage in Indiana as a creditor in first lien mortgage transactions.**
 4 **However, this article does not require an employee of a person that**
 5 **is licensed under this article to obtain a license to make a first lien**
 6 **mortgage loan.**

7 **Sec. 402. (1) The department shall receive and act on all**
 8 **applications for licenses to engage in first lien mortgage**
 9 **transactions. Applications must be made as prescribed by the**
 10 **director.**

11 **(2) A license may not be issued unless the department finds that**
 12 **the financial responsibility, character, and fitness of:**

- 13 **(a) the applicant and any significant affiliate of the applicant;**
- 14 **(b) each executive officer, director, or manager of the**
 15 **applicant, or any other individual having a similar status or**
 16 **performing a similar function for the applicant; and**
- 17 **(c) if known, each person directly or indirectly owning of**
 18 **record or owning beneficially at least ten percent (10%) of the**
 19 **outstanding shares of any class of equity security of the**
 20 **applicant;**

21 **are such as to warrant belief that the business will be operated**
 22 **honestly and fairly within the purposes of this article.**

23 **(3) The director is entitled to request evidence of compliance**
 24 **with this section at:**

- 25 **(a) the time of application;**
- 26 **(b) the time of renewal of a license; or**
- 27 **(c) any other time considered necessary by the director.**

28 **(4) Evidence of compliance with this section may include:**

- 29 **(a) criminal background checks, including a national criminal**
 30 **history background check (as defined in IC 10-13-3-12) by the**
 31 **Federal Bureau of Investigation, for any individual described**
 32 **in subsection (2);**
- 33 **(b) credit histories; and**
- 34 **(c) other background checks considered necessary by the**
 35 **director.**

36 **If the director requests a national criminal history background**
 37 **check under subdivision (a) for an individual described in**
 38 **subsection (2), the director shall require the individual to submit**
 39 **fingerprints to the department or to the state police department, as**
 40 **appropriate, at the time evidence of compliance is requested under**
 41 **subsection (3). The individual to whom the request is made shall**
 42 **pay any fees or costs associated with the fingerprints and the**

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1 national criminal history background check. The national criminal
 2 history background check may be used by the director to
 3 determine the individual's compliance with this section. The
 4 director or the department may not release the results of the
 5 national criminal history background check to any private entity.

6 (5) The department may deny an application under this section
 7 if the director of the department determines that the application
 8 was submitted for the benefit of, or on behalf of, a person who does
 9 not qualify for a license.

10 (6) Upon written request, the applicant is entitled to a hearing
 11 on the question of the qualifications of the applicant for a license
 12 in the manner provided in IC 4-21.5.

13 (7) The applicant shall pay the following fees at the time
 14 designated by the department:

15 (a) An initial license fee as established by the department
 16 under IC 28-11-3-5.

17 (b) An annual renewal fee as established by the department
 18 under IC 28-11-3-5.

19 (c) Examination fees as established by the department under
 20 IC 28-11-3-5.

21 (8) A fee as established by the department under IC 28-11-3-5
 22 may be charged for each day the annual renewal fee under
 23 subsection (7)(b) is delinquent.

24 (9) A license issued under this section is not assignable or
 25 transferable.

26 (10) Subject to subsection (11), the director may designate an
 27 automated central licensing system and repository, operated by a
 28 third party, to serve as the sole entity responsible for:

29 (a) processing applications and renewals for licenses under
 30 this section; and

31 (b) performing other services that the director determines are
 32 necessary for the orderly administration of the department's
 33 licensing system under this article.

34 (11) The director's authority to designate an automated central
 35 licensing system and repository under subsection (10) is subject to
 36 the following:

37 (a) The director or the director's designee may not require
 38 any person exempt from licensure under this article, or any
 39 employee or agent of an exempt person, to:

40 (i) submit information to; or

41 (ii) participate in;

42 the automated central licensing system and repository.

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(b) Information stored in the automated central licensing system and repository is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:

(i) obtain information from the automated central licensing system and repository, unless the person is authorized to do so by statute;

(ii) initiate any civil action based on information obtained from the automated central licensing system if the information is not otherwise available to the person under any other state law; or

(iii) initiate any civil action based on information obtained from the automated central licensing system if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(c) Documents, materials, and other forms of information in the control or possession of the automated central licensing system and repository that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the automated central licensing system and repository;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director or the director's designee may use the documents, materials, or other information available to the director or the director's designee in furtherance of any action brought in connection with the director's duties under this article.

(d) Disclosure of documents, materials, and information:

(i) to the director or the director's designee; or

(ii) by the director or the director's designee;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(e) Information provided to the automated central licensing system and repository is subject to IC 4-1-11.

(f) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or

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proceeding; or

(iii) use information to initiate a civil action or proceeding; if the information may be obtained from the director or the director's designee under any law.

(g) The director may require a licensee required to submit information to the automated central licensing system and repository to pay a processing fee considered reasonable by the director.

Sec. 403. (1) A license issued by the department authorizing a person to engage in first lien mortgage transactions under this article may be revoked by the department if the person fails to:

(a) file any renewal form required by the department; or

(b) pay any license renewal fee described under section 402 of this chapter;

not later than sixty (60) days after the due date.

(2) A person whose license is revoked under this section may do either of the following:

(a) Pay all delinquent fees and apply for a new license.

(b) Appeal the revocation to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation, the license remains in force.

Sec. 404. (1) The department may issue to a person licensed to engage in first lien mortgage transactions an order to show cause why the person's license should not be revoked or suspended for a period determined by the department. The order must state the place and time for a meeting with the department that is not less than ten (10) days from the date of the order. After the meeting, the department shall revoke or suspend the license if the department finds that:

(a) the licensee has repeatedly and willfully violated:

(i) this article or any rule or order lawfully adopted or issued under this article; or

(ii) any other state or federal law, regulation, or rule applicable to first lien mortgage transactions; or

(b) facts or conditions exist which would clearly have justified the department in refusing to grant a license had the facts or conditions been known to exist at the time the application for the license was made.

(2) Except as provided in section 403 of this chapter, a revocation or suspension of a license is not authorized under this article unless before instituting proceedings to suspend or revoke

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the license, the department gives notice to the licensee of the conduct or facts that warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(3) If the department finds that probable cause for revocation of a license exists and that enforcement of this article requires immediate suspension of the license pending investigation, the department may, after a hearing with the licensee upon five (5) days written notice to the licensee, enter an order suspending the license for not more than thirty (30) days.

(4) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of the revocation or suspension. Not later than five (5) days after the entry of the order the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license to engage in first lien mortgage transactions may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this paragraph does not affect the person's liability for acts previously committed and coming within the scope of this article.

(6) A revocation, suspension, or relinquishment of a license does not impair or affect the obligation of any preexisting lawful contract between:

- (a) the person whose license has been revoked, suspended, or relinquished; and
- (b) any debtor.

(7) The department may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if the director determines that, at the time the determination is made, there is no fact or condition that exists that clearly would justify the department in refusing to grant a license.

(8) If the director:

- (a) has just cause to believe an emergency exists from which it is necessary to protect the interests of the public; or
 - (b) determines that a license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;
- the director may proceed with the revocation of the license under IC 4-21.5-3-6.

Sec. 405. (1) Every licensee shall maintain records in a manner that will enable the department to determine whether the licensee

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1 is complying with this Article. The record keeping system of a
 2 licensee is sufficient if the licensee makes the required information
 3 reasonably available. The department shall determine the
 4 sufficiency of the records and whether the licensee has made the
 5 required information reasonably available. The department shall
 6 be given free access to the records wherever the records are
 7 located. Records concerning any first lien mortgage transaction
 8 shall be retained for two (2) years after the making of the final
 9 entry relating to the transaction, but in the case of a revolving first
 10 lien mortgage transaction, the two (2) years required under this
 11 subsection is measured from the date of each entry relating to the
 12 transaction.

13 (2) A licensee shall file with the department financial statements
 14 relating to all first lien mortgage transactions originated by the
 15 licensee. The licensee shall file the financial statements as required
 16 by the department, but not more frequently than annually, in the
 17 form prescribed by the department.

18 (3) A licensee shall file notification with the department if the
 19 licensee:

- 20 (a) has a change in name, address, or any of its principals;
- 21 (b) opens a new branch, closes an existing branch, or relocates
- 22 an existing branch;
- 23 (c) files for bankruptcy or reorganization; or
- 24 (d) is subject to revocation or suspension proceedings by a
- 25 state or governmental authority with regard to the licensee's
- 26 activities;

27 not later than thirty (30) days after the date of the event described
 28 in this subsection.

29 (4) A licensee shall file notification with the department if a key
 30 officer or director of the licensee:

- 31 (a) is under indictment for a felony involving fraud, deceit, or
- 32 misrepresentation under the laws of Indiana or any other
- 33 jurisdiction; or
- 34 (b) has been convicted of or pleaded guilty or nolo contendere
- 35 to a felony involving fraud, deceit, or misrepresentation under
- 36 the laws of Indiana or any other jurisdiction;

37 not later than thirty (30) days after the date of the event described
 38 in this subsection.

39 Sec. 501. A creditor in a first lien mortgage transaction shall
 40 comply with IC 6-1.1-12-43, to the extent applicable.

41 Sec. 502. (1) A violation by a creditor in a first lien mortgage
 42 transaction of Section 125 of the Federal Consumer Credit

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1 Protection Act (15 U.S.C. 1635) (concerning a debtor's right to
 2 rescind a transaction) constitutes a violation of this article. A
 3 creditor may not accrue interest during the period when a first lien
 4 mortgage transaction may be rescinded under Section 125 of the
 5 Federal Consumer Protection Act (15 U.S.C. 1635).

6 (2) A creditor must make available for disbursement the
 7 proceeds of a transaction subject to subsection (1) on the later of:

8 (a) the date the creditor is reasonably satisfied that the debtor
 9 has not rescinded the transaction; or

10 (b) the first business day after the expiration of the rescission
 11 period under subsection (1).

12 Chapter 3. Administration

13 Sec. 101. This chapter shall be known and may be cited as the
 14 First Lien Mortgage Lending Act - Administration.

15 Sec. 102. This chapter applies to a person that regularly engages
 16 as a creditor in first lien mortgage transactions in Indiana.

17 Sec. 103. (1) In addition to other powers granted by this article,
 18 the department within the limitations provided by law may:

19 (a) receive and act on complaints, take action designed to
 20 obtain voluntary compliance with this article, or commence
 21 proceedings on the department's own initiative;

22 (b) counsel persons and groups on their rights and duties
 23 under this article;

24 (c) establish programs for the education of consumers with
 25 respect to credit practices and problems;

26 (d) make studies appropriate to effectuate the purposes and
 27 policies of this article and make the results available to the
 28 public;

29 (e) adopt, amend, and repeal rules, orders, policies, and forms
 30 to carry out the provisions of this article;

31 (f) maintain more than one (1) office within Indiana; and

32 (g) appoint any necessary attorneys, hearing examiners,
 33 clerks, and other employees and agents and fix their
 34 compensation, and authorize attorneys appointed under this
 35 section to appear for and represent the department in court.

36 (2) Liability may not be imposed under this article for an act
 37 done or omitted in conformity with a rule, written notice, written
 38 opinion, written interpretation, or written directive of the
 39 department notwithstanding the fact that after the act is done or
 40 omitted the rule, written notice, written opinion, written
 41 interpretation, or written directive may be:

42 (a) amended or repealed; or

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(b) determined by judicial or other authority to be invalid;
for any reason.

Sec. 104. (1) In administering this article and in order to determine whether the provisions of this article are being complied with by persons engaging in acts subject to this article, the department may examine the records of persons and may make investigations of persons as may be necessary to determine compliance. Records subject to examination under this section include the following:

(a) Training, operating, and policy manuals.

(b) Minutes of:

(i) management meetings; and

(ii) other meetings.

(c) Financial records, credit files, and data bases.

(d) Other records that the department determines are necessary to perform its investigation or examination.

The department may also administer oaths or affirmations, subpoena witnesses, compel the attendance of witnesses, adduce evidence, and require the production of any matter which is relevant to an investigation. The department shall determine the sufficiency of the records maintained and whether the person has made the required information reasonably available. The records concerning any transaction subject to this article shall be retained for two (2) years after the making of the final entry relating to the first lien mortgage transaction, but in the case of a revolving first lien mortgage transaction the two (2) year period is measured from the date of each entry.

(2) The department's examination and investigatory authority under this article includes the following:

(a) The authority to require a creditor to refund overcharges resulting from the creditor's noncompliance with the terms of a first lien mortgage transaction.

(b) The authority to require a creditor to comply with the penalty provisions set forth in IC 24-4.4-2-201.

(c) The authority to investigate complaints filed with the department by debtors.

(3) The department shall be given free access to the records wherever the records are located. If the person's records are located outside Indiana, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or the department's representative to examine the

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records where they are maintained. The department may designate comparable officials of the state in which the records are located to inspect the records on behalf of the department.

(4) Upon a person's failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice by the department to all affected persons, the department may apply to any civil court with jurisdiction for an order compelling compliance.

(5) The department shall not make public:

(a) the name or identity of a person whose acts or conduct the department investigates under this section; or

(b) the facts discovered in the investigation.

However, this subsection does not apply to civil actions or enforcement proceedings under this article.

Sec. 105. Except as otherwise provided, IC 4-21.5-3 governs any action taken by the department under this chapter or IC 24-4.4-2-401 through IC 24-4.4-2-405. IC 4-22-2 applies to the adoption of rules by the department under this article. However, if the department determines that an emergency exists, the department may adopt any rules authorized by this article under IC 4-22-2-37.1.

Sec. 106. (1) After notice and hearing, the department may order a creditor or a person acting on the creditor's behalf to cease and desist from engaging in violations of this article. In any civil court with jurisdiction:

(a) a respondent aggrieved by an order of the department may obtain judicial review of the order; and

(b) the department may obtain an order of the court for the enforcement of the department's order.

A proceeding for review or enforcement under this subsection shall be initiated by the filing of a petition in the court. Copies of the petition shall be served upon all parties of record.

(2) Not later than thirty (30) days after service of a petition for review upon the department under subsection (1), or within such further time as the court may allow, the department shall transmit to the court the original or a certified copy of the entire record upon which the order that is the subject of the review is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After conducting a hearing on the matter, the court may:

(a) reverse or modify the order if the findings of fact of the

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department are clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record;

(b) grant any temporary relief or restraining order the court considers just; and

(c) enter an order:

(i) enforcing;

(ii) modifying;

(iii) enforcing as modified; or

(iv) setting aside;

in whole or in part, the order of the department; or

(d) enter an order remanding the case to the department for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the department in the interest of justice for the purpose of:

(a) adducing additional specified and material evidence; and

(b) seeking a finding upon such evidence;

upon good cause shown for the failure to previously adduce this evidence before the department.

(4) The jurisdiction of the court is exclusive and the court's final judgment or decree is subject to review on appeal in the same manner and form and with the same effect as in appeals from a final judgment or decree. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated not later than thirty (30) days after a copy of the order of the department is received. If a proceeding is not initiated within the time set forth in this subsection, the department may obtain a decree of a civil court with jurisdiction for enforcement of the department's order upon a showing that:

(a) the order was issued in compliance with this section;

(b) a proceeding for review was not initiated within the thirty (30) day period prescribed by this subsection; and

(c) the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by a respondent, the department may not issue an order under this section but may bring a civil action for an injunction under section 111 of this chapter.

Sec. 107. If it is claimed that a person has engaged in conduct subject to an order by:

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1 (a) the department under section 106(1) of this chapter; or
 2 (b) a court under sections 108 through 110 of this chapter;
 3 the department may accept an assurance in writing that the person
 4 will not engage in the conduct in the future. If a person giving an
 5 assurance of discontinuance fails to comply with the terms of the
 6 assurance, the assurance is evidence that before the assurance was
 7 issued the person engaged in the conduct described in the
 8 assurance.

9 Sec. 108. The department may bring a civil action to restrain a
 10 person from violating this article and for other appropriate relief.

11 Sec. 109. (1) As used in this section, "deceptive act" means an
 12 act or a practice in which a person knowingly or intentionally:

13 (a) makes a material misrepresentation concerning; or

14 (b) conceals material information regarding the terms or
 15 conditions of;

16 a first lien mortgage transaction.

17 (2) For purposes of this section, "knowingly" means having
 18 actual knowledge at the time of the transaction.

19 (3) The department may bring a civil action to enjoin a
 20 deceptive act performed in connection with a first lien mortgage
 21 transaction.

22 Sec. 110. With respect to an action brought under:

23 (a) section 108 of this chapter to enjoin violations of this
 24 article; or

25 (b) section 109 of this chapter to enjoin deceptive acts;

26 the department may apply to the court for appropriate temporary
 27 relief against a respondent, pending final determination of the
 28 proceedings. If the court finds after a hearing held upon notice to
 29 the respondent that there is reasonable cause to believe that the
 30 respondent is engaging in or is likely to engage in the conduct
 31 sought to be restrained, the court may grant any temporary relief
 32 or restraining order the court considers appropriate.

33 Sec. 111. (1) The department may bring a civil action against a
 34 creditor or a person acting on the creditor's behalf to recover a
 35 civil penalty for willfully violating this article. If the court finds
 36 that the defendant has engaged in a course of repeated and willful
 37 violations of this article, the court may assess a civil penalty of not
 38 more than five thousand dollars (\$5,000). A civil penalty may not
 39 be imposed under this subsection:

40 (a) for violations of this article occurring more than two (2)
 41 years before the action is brought; or

42 (b) for making unconscionable agreements or engaging in a

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1 course of fraudulent or unconscionable conduct.

2 (2) If the department determines, after notice and opportunity
3 for hearing, that a person has violated this article, the department
4 may, in addition to or instead of all other remedies available under
5 this section, impose upon the person a civil penalty not greater
6 than ten thousand dollars (\$10,000) per violation.

7 Sec. 112. In an action brought by the department under this
8 article, the defendant does not have a right to trial by a jury.

9 Sec. 113. The grant of powers to the department under this
10 article does not affect remedies available to debtors under this
11 article or under other principles of law or equity.

12 Sec. 114. The department may bring an action or a proceeding
13 in a court in a county:

14 (1) in which an act on which the action or proceeding is based
15 occurred;

16 (2) in which the respondent resides or transacts business; or

17 (3) in which the action or proceeding is otherwise authorized
18 by rule or venue laws.

19 Sec. 115. As used in this article, "civil court" means any court
20 in Indiana having jurisdiction of civil cases.

21 SECTION 24. IC 24-4.5-1-301, AS AMENDED BY P.L.57-2006,
22 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 JANUARY 1, 2009]: Sec. 301. General Definitions – In addition to
24 definitions appearing in subsequent chapters in this article:

25 (1) "Agreement" means the bargain of the parties in fact as found in
26 their language or by implication from other circumstances, including
27 course of dealing or usage of trade or course of performance.

28 (2) "Agricultural purpose" means a purpose related to the
29 production, harvest, exhibition, marketing, transportation, processing,
30 or manufacture of agricultural products by a natural person who
31 cultivates, plants, propagates, or nurtures the agricultural products;
32 "Agricultural products" includes agricultural, horticultural, viticultural,
33 and dairy products, livestock, wildlife, poultry, bees, forest products,
34 fish and shellfish, and any and all products raised or produced on farms
35 and any processed or manufactured products thereof.

36 (3) "Average daily balance" means the sum of each of the daily
37 balances in a billing cycle divided by the number of days in the billing
38 cycle, and if the billing cycle is a month, the creditor may elect to treat
39 the number of days in each billing cycle as thirty (30).

40 (4) "Closing costs" with respect to a debt secured by an interest in
41 land includes:

42 (a) fees or premiums for title examination, title insurance, or

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- similar purposes, including surveys;
- (b) fees for preparation of a deed, settlement statement, or other documents;
- (c) escrows for future payments of taxes and insurance;
- (d) fees for notarizing deeds and other documents;
- (e) appraisal fees; and
- (f) credit reports.

(5) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

(6) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(7) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) "Creditor" means a person:

- (a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable **by written agreement in more than four (4) installments (not including a down payment)**; and
- (b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

(9) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(10) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

- (a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;
- (b) by the lender's payment or agreement to pay the debtor's obligations; or
- (c) by the lender's purchase from the obligee of the debtor's obligations.

(11) "Official fees" means:

- (a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

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(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(12) "Organization" means a corporation, a government or governmental subdivision, or an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, or an association.

(13) "Payable in installments" means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(14) "Person" includes a natural person or an individual and an organization.

(15) "Person related to" with respect to an individual means:

- (a) the spouse of the individual;
- (b) a brother, brother-in-law, sister, sister-in-law of the individual;
- (c) an ancestor or lineal descendants of the individual or the individual's spouse; and
- (d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

"Person related to" with respect to an organization means:

- (a) a person directly or indirectly controlling, controlled by, or under common control with the organization;
- (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;
- (c) the spouse of a person related to the organization; and
- (d) a relative by blood or marriage of a person related to the organization who shares the same home with the person.

(16) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(17) "Mortgage transaction" means a transaction in which a first mortgage or a land contract which constitutes a first lien is created or retained against land.

(18) "Regularly engaged" means a person who extends consumer credit more than:

- (a) twenty-five (25) times; or
 - (b) five (5) times for transactions secured by a dwelling;
- in the preceding calendar year. If a person did not meet these numerical

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standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

(19) "Seller credit card" means an arrangement which gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(20) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

- (a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account; and
- (b) subject to supervision by an official or agency of a state or of the United States.

(21) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(22) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

- (a) controls;
- (b) is controlled by; or
- (c) is under common control with;

the person subject to this article.

SECTION 25. IC 24-4.5-2-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definition; "Seller" - Except as otherwise provided, "seller" **means a person regularly engaged as a creditor in making consumer credit sales.** **The term** includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

SECTION 26. IC 24-4.5-2-201, AS AMENDED BY P.L.57-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 201. Credit Service Charge for Consumer Credit Sales other than Revolving Charge Accounts — (1) With respect to a consumer credit sale, other than a sale pursuant to a revolving charge account, a seller may contract for and receive a credit service

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charge not exceeding that permitted by this section.

(2) The credit service charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

(a) the total of:

(i) thirty-six percent (36%) per year on that part of the unpaid balances of the amount financed which is three hundred dollars (\$300) or less;

(ii) twenty-one percent (21%) per year on that part of the unpaid balances of the amount financed which is more than three hundred dollars (\$300) but does not exceed one thousand dollars (\$1,000); and

(iii) fifteen percent (15%) per year on that part of the unpaid balances of the amount financed which is more than one thousand dollars (\$1,000); or

(b) twenty-one percent (21%) per year on the unpaid balances of the amount financed.

(3) This section does not limit or restrict the manner of contracting for the credit service charge, whether by way of add-on, discount, or otherwise, so long as the rate of the credit service charge does not exceed that permitted by this section. If the sale is precomputed:

(a) the credit service charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-2-210).

(4) For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed more than thirty (30) days after that date, with the date of commencement of delivery or performance except as set forth below:

(a) Delays attributable to the customer. Where the customer requests delivery after the thirty (30) day period or where delivery occurs after the thirty (30) day period for a reason attributable to the customer (including but not limited to failure to close on a residence or failure to obtain lease approval), the term of the sale agreement shall commence with the date credit is granted.

(b) Partial Deliveries. Where any portion of the order has been delivered within the thirty (30) day period, the term of the sale agreement shall commence with the date credit is granted.

Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a

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month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the seller may reasonably establish, the seller may make the same credit service charge on all amounts financed within a specified range. A credit service charge so made does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of credit service charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) Notwithstanding subsection (2), the seller may contract for and receive a minimum credit service charge of not more than thirty dollars (\$30). The minimum credit service charge allowed under this subsection may be imposed only if:

(a) the ~~borrower~~ **debtor** prepays in full a consumer credit sale, refinancing, or consolidation, regardless of whether the sale, refinancing, or consolidation is precomputed;

(b) the sale, refinancing, or consolidation prepaid by the ~~borrower~~ **debtor** is subject to a credit service charge that:

(i) is contracted for by the parties; and

(ii) does not exceed the rate prescribed in subsection (2); and

(c) the credit service charge earned at the time of prepayment is less than the minimum credit service charge contracted for under this subsection.

(7) The amounts of three hundred dollars (\$300) and one thousand dollars (\$1,000) in subsection (2) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106).

(8) The amount of thirty dollars (\$30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992.

SECTION 27. IC 24-4.5-2-209 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 209. Right to Prepay - (1) Subject to the provisions on rebate upon prepayment (IC 24-4.5-2-210), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

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(2) At the time of prepayment of a credit sale not subject to the provisions of rebate upon prepayment (IC 24-4.5-2-210), the total credit service charge, including the prepaid credit service charge, may not exceed the maximum charge allowed under this chapter for the period the credit sale was in effect.

(3) The creditor or mortgage servicer shall provide an accurate payoff of the consumer credit sale to the debtor within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer credit sale payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer credit sale payoff amount is liable for:

(A) one hundred dollars (\$100) if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the credit service charge that accrues on the sale from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer credit sale payoff amount is provided;

if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with clause (A).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

(4) As used in this subsection, "mortgage transaction" means a consumer credit sale in which a mortgage, deed of trust, or a land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least ten (10) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written

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offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than twenty (20) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable:

- (a) under the terms set forth in subsection (3), as if the creditor or mortgage servicer had failed to provide a consumer credit sale payoff amount; and
- (b) in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 28. IC 24-4.5-3-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definitions: "Lender"; "Precomputed"; "Principal" – (1) Except as otherwise provided, "lender" means a person regularly engaged in making consumer loans. The term includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(2) A loan, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(3) "Principal" of a loan means the total of:

- (a) the net amount paid to, receivable by, or paid or payable for the account of the debtor;
- (b) the amount of any discount excluded from the loan finance charge (subsection (2) of 24-4.5-3-109); and
- (c) to the extent that payment is deferred:
 - (i) amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and
 - (ii) additional charges permitted by this Chapter (24-4.5-3-202).

SECTION 29. IC 24-4.5-3-201, AS AMENDED BY P.L.57-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 201. Loan Finance Charge for Consumer

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Loans other than Supervised Loans—(1) Except as provided in subsections (6) and (8), with respect to a consumer loan other than a supervised loan (IC 24-4.5-3-501), a lender may contract for a loan finance charge, calculated according to the actuarial method, not exceeding twenty-one percent (21%) per year on the unpaid balances of the principal.

(2) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(3) For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth ($1/30$) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. For purposes of computing average daily balances, the creditor may elect to treat all months as consisting of thirty (30) days.

(4) With respect to a consumer loan made pursuant to a revolving loan account:

(a) the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is one and three-fourths percent ($1\frac{3}{4}\%$) of an amount no greater than:

(i) the average daily balance of the debt;

(ii) the unpaid balance of the debt on the same day of the billing cycle; or

(iii) subject to subsection (5), the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the same day of the billing cycle, is included; for the purposes of this subparagraph and subparagraph (ii), a variation of not more than four (4) days from month to month is "the same day of the billing cycle";

(b) if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed the maximum annual percentage

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rate if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to one-twelfth (1/12) the maximum annual percentage rate as the number of days in the billing cycle bears to thirty (30); and (c) notwithstanding subsection (1), if there is an unpaid balance on the date as of which the loan finance charge is applied, the lender may contract for and receive a charge not exceeding fifty cents (\$0.50) if the billing cycle is monthly or longer, or the pro rata part of fifty cents (\$0.50) which bears the same relation to fifty cents (\$0.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges (paragraph (c) of subsection (1) of IC 24-4.5-3-202).

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all amounts financed within a specified range. A loan finance charge does not violate subsection (1) if:

- (a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (1); and
- (b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) With respect to a consumer loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars (\$30). The minimum loan finance charge allowed under this subsection may be imposed only if:

- (a) the **borrower debtor** prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;
- (b) the loan, refinancing, or consolidation prepaid by the **borrower debtor** is subject to a loan finance charge that:
 - (i) is contracted for by the parties; and
 - (ii) does not exceed the rate prescribed in subsection (1); and
- (c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

(7) The amount of thirty dollars (\$30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts

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(IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992.

(8) In addition to the loan finance charge provided for in this section, a lender may contract for the following:

(a) With respect to a consumer loan that is not made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the loan amount.

(b) With respect to a consumer loan that is made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the line of credit that was contracted for.

(9) The charges provided for in subsection (8):

(a) are not subject to refund or rebate;

(b) are not permitted if a lender makes a settlement charge under IC 24-4.5-3-202(d)(ii); and

(c) are limited to two percent (2%) of the part of the loan that does not exceed two thousand dollars (\$2,000), if the loan is not primarily secured by an interest in land.

Notwithstanding subdivision (a), if a lender retains any part of a loan origination fee charged on a loan that is paid in full by a new loan from the same lender within three (3) months after the date of the prior loan, the lender may charge a loan origination fee only on that part of the new loan not used to pay the amount due on the prior loan, or in the case of a revolving loan, the lender may charge a loan origination fee only on the difference between the amount of the existing credit line and the increased credit line. This subsection does not prohibit a lender from contracting for and receiving a fee for preparing deeds, mortgages, reconveyance, and similar documents under IC 24-4.5-3-202(d)(ii), in addition to the charges provided for in subsection (8).

SECTION 30. IC 24-4.5-3-209 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 209. Right to Prepay - (1) Subject to the provisions on rebate upon prepayment (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty. With respect to a consumer loan that is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of any amount prepaid within sixty (60) days of the date of the prepayment in full, after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

(a) if the loan is refinanced or consolidated with the same

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1 creditor;

2 (b) for prepayment by proceeds of any insurance or acceleration
3 after default; or

4 (c) after three (3) years from the contract date.

5 (2) At the time of prepayment of a consumer loan not subject to the
6 provisions of rebate upon prepayment (IC 24-4.5-3-210), the total
7 finance charge, including the prepaid finance charge but excluding the
8 loan origination fee allowed under IC 24-4.5-3-201, may not exceed the
9 maximum charge allowed under this chapter for the period the loan was
10 in effect. For the purposes of determining compliance with this
11 subsection, the total finance charge does not include the following:

12 (a) The loan origination fee allowed under IC 24-4.5-3-201.

13 (b) The ~~borrower~~ **debtor** paid mortgage broker fee, if any, paid to
14 a person who does not control, is not controlled by, or is not under
15 common control with, the creditor holding the loan at the time a
16 consumer loan is prepaid.

17 (3) The creditor or mortgage servicer shall provide an accurate
18 payoff of the consumer loan to the debtor within ten (10) calendar days
19 after the creditor or mortgage servicer receives the debtor's written
20 request for the accurate consumer loan payoff amount. A creditor or
21 mortgage servicer who fails to provide the accurate consumer loan
22 payoff amount is liable for:

23 (a) one hundred dollars (\$100) if an accurate consumer loan
24 payoff amount is not provided by the creditor or mortgage
25 servicer within ten (10) calendar days after the creditor or
26 mortgage servicer receives the debtor's first written request; and

27 (b) the greater of:

28 (i) one hundred dollars (\$100); or

29 (ii) the loan finance charge that accrues on the loan from the
30 date the creditor or mortgage servicer receives the first written
31 request until the date on which the accurate consumer loan
32 payoff amount is provided;

33 if an accurate consumer loan payoff amount is not provided by the
34 creditor or mortgage servicer within ten (10) calendar days after
35 the creditor or mortgage servicer receives the debtor's second
36 written request, and the creditor or mortgage servicer failed to
37 comply with subdivision (a).

38 A liability under this subsection is an excess charge under
39 IC 24-4.5-5-202.

40 **(4) As used in this subsection, "mortgage transaction" means a**
41 **consumer credit loan in which a mortgage, deed of trust, or a land**
42 **contract that constitutes a lien is created or retained against land**

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upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least ten (10) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than twenty (20) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable:

(a) under the terms set forth in subsection (3), as if the creditor or mortgage servicer had failed to provide a consumer credit loan payoff amount; and

(b) in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 31. IC 24-4.5-3-508, AS AMENDED BY P.L.57-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 508. Loan Finance Charge for Supervised Loans – (1) With respect to a supervised loan, including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) The loan finance charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

(a) the total of:

(i) thirty-six percent (36%) per year on that part of the unpaid balances of the principal which is three hundred dollars (\$300) or less;

(ii) twenty-one percent (21%) per year on that part of the

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- 1 unpaid balances of the principal which is more than three
 2 hundred dollars (\$300) but does not exceed one thousand
 3 dollars (\$1,000); and
 4 (iii) fifteen percent (15%) per year on that part of the unpaid
 5 balances of the principal which is more than one thousand
 6 dollars (\$1000); or
 7 (b) twenty-one percent (21%) per year on the unpaid balances of
 8 the principal.
 9 (3) This section does not limit or restrict the manner of contracting
 10 for the loan finance charge, whether by way of add-on, discount, or
 11 otherwise, so long as the rate of the loan finance charge does not
 12 exceed that permitted by this section. If the loan is precomputed:
 13 (a) the loan finance charge may be calculated on the assumption
 14 that all scheduled payments will be made when due; and
 15 (b) the effect of prepayment is governed by the provisions on
 16 rebate upon prepayment (IC 24-4.5-3-210).
 17 (4) The term of a loan for the purposes of this section commences
 18 on the date the loan is made. Differences in the lengths of months are
 19 disregarded, and a day may be counted as one-thirtieth (1/30) of a
 20 month. Subject to classifications and differentiations the lender may
 21 reasonably establish, a part of a month in excess of fifteen (15) days
 22 may be treated as a full month if periods of fifteen (15) days or less are
 23 disregarded and that procedure is not consistently used to obtain a
 24 greater yield than would otherwise be permitted.
 25 (5) Subject to classifications and differentiations, the lender may
 26 reasonably establish and make the same loan finance charge on all
 27 principal amounts within a specified range. A loan finance charge does
 28 not violate subsection (2) if:
 29 (a) when applied to the median amount within each range, it does
 30 not exceed the maximum permitted in subsection (2); and
 31 (b) when applied to the lowest amount within each range, it does
 32 not produce a rate of loan finance charge exceeding the rate
 33 calculated according to paragraph (a) by more than eight percent
 34 (8%) of the rate calculated according to paragraph (a).
 35 (6) The amounts of three hundred dollars (\$300) and one thousand
 36 dollars (\$1,000) in subsection (2) and thirty dollars (\$30) in subsection
 37 (7) are subject to change pursuant to the provisions on adjustment of
 38 dollar amounts (IC 24-4.5-1-106). For the adjustment of the amount of
 39 thirty dollars (\$30), the Reference Base Index to be used is the Index
 40 for October 1992.
 41 (7) With respect to a supervised loan not made pursuant to a
 42 revolving loan account, the lender may contract for and receive a

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1 minimum loan finance charge of not more than thirty dollars (\$30). The
 2 minimum loan finance charge allowed under this subsection may be
 3 imposed only if:

4 (a) the ~~borrower~~ **debtor** prepays in full a consumer loan,
 5 refinancing, or consolidation, regardless of whether the loan,
 6 refinancing, or consolidation is precomputed;

7 (b) the loan, refinancing, or consolidation prepaid by the ~~borrower~~
 8 **debtor** is subject to a loan finance charge that:

9 (i) is contracted for by the parties; and

10 (ii) does not exceed the rate prescribed in subsection (2); and

11 (c) the loan finance charge earned at the time of prepayment is
 12 less than the minimum loan finance charge contracted for under
 13 this subsection.

14 SECTION 32. IC 24-5-0.5-2, AS AMENDED BY P.L.1-2007,
 15 SECTION 165, IS AMENDED TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) As used in this chapter:

17 (1) "Consumer transaction" means a sale, lease, assignment,
 18 award by chance, or other disposition of an item of personal
 19 property, real property, a service, or an intangible, except
 20 securities and policies or contracts of insurance issued by
 21 corporations authorized to transact an insurance business under
 22 the laws of the state of Indiana, with or without an extension of
 23 credit, to a person for purposes that are primarily personal,
 24 familial, charitable, agricultural, or household, or a solicitation to
 25 supply any of these things. However, the term includes the
 26 following:

27 (A) A transfer of structured settlement payment rights under
 28 IC 34-50-2.

29 (B) An unsolicited advertisement sent to a person by telephone
 30 facsimile machine offering a sale, lease, assignment, award by
 31 chance, or other disposition of an item of personal property,
 32 real property, a service, or an intangible.

33 (2) "Person" means an individual, corporation, the state of Indiana
 34 or its subdivisions or agencies, business trust, estate, trust,
 35 partnership, association, nonprofit corporation or organization, or
 36 cooperative or any other legal entity.

37 (3) "Supplier" means the following:

38 (A) A seller, lessor, assignor, or other person who regularly
 39 engages in or solicits consumer transactions, including
 40 soliciting a consumer transaction by using a telephone
 41 facsimile machine to transmit an unsolicited advertisement.

42 The term includes a manufacturer, wholesaler, or retailer,

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whether or not the person deals directly with the consumer.

(B) A person who contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.

(C) With respect to a deceptive act described in section 3(h) of this chapter, a creditor (as defined in IC 24-9-2-6).

(4) "Subject of a consumer transaction" means the personal property, real property, services, or intangibles offered or furnished in a consumer transaction.

(5) "Cure" as applied to a deceptive act, means either:

(A) to offer in writing to adjust or modify the consumer transaction to which the act relates to conform to the reasonable expectations of the consumer generated by such deceptive act and to perform such offer if accepted by the consumer; or

(B) to offer in writing to rescind such consumer transaction and to perform such offer if accepted by the consumer.

The term includes an offer in writing of one (1) or more items of value, including monetary compensation, that the supplier delivers to a consumer or a representative of the consumer if accepted by the consumer.

(6) "Offer to cure" as applied to a deceptive act is a cure that:

(A) is reasonably calculated to remedy a loss claimed by the consumer; and

(B) includes a minimum additional amount that is the greater of:

(i) ten percent (10%) of the value of the remedy under clause (A), but not more than four thousand dollars (\$4,000); or

(ii) five hundred dollars (\$500);

as compensation for attorney's fees, expenses, and other costs that a consumer may incur in relation to the deceptive act.

(7) "Uncured deceptive act" means a deceptive act:

(A) with respect to which a consumer who has been damaged by such act has given notice to the supplier under section 5(a) of this chapter; and

(B) either:

(i) no offer to cure has been made to such consumer within thirty (30) days after such notice; or

(ii) the act has not been cured as to such consumer within a reasonable time after the consumer's acceptance of the offer to cure.

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(8) "Incurable deceptive act" means a deceptive act done by a supplier as part of a scheme, artifice, or device with intent to defraud or mislead. The term includes a failure of a transferee of structured settlement payment rights to timely provide a true and complete disclosure statement to a payee as provided under IC 34-50-2 in connection with a direct or indirect transfer of structured settlement payment rights.

(9) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration exceeding one hundred dollars (\$100) for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. The term does not include ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme.

(10) "Promoting a pyramid promotional scheme" means:

(A) inducing or attempting to induce one (1) or more other persons to become participants in a pyramid promotional scheme; or

(B) assisting another in promoting a pyramid promotional scheme.

(11) "Elderly person" means an individual who is at least sixty-five (65) years of age.

(12) "Telephone facsimile machine" means equipment that has the capacity to transcribe text or images, or both, from:

(A) paper into an electronic signal and to transmit that signal over a regular telephone line; or

(B) an electronic signal received over a regular telephone line onto paper.

(13) "Unsolicited advertisement" means material advertising the commercial availability or quality of:

(A) property;

(B) goods; or

(C) services;

that is transmitted to a person without the person's prior express invitation or permission, in writing or otherwise.

(b) As used in section 3(a)(15) of this chapter:

(1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service.

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(2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one (1) telephone company.

(3) "Local telephone number" refers to a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800-, 888-, or 900- exchange numbers listed in a local telephone directory.

SECTION 33. IC 24-5-0.5-3, AS AMENDED BY P.L.85-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) The following acts or representations as to the subject matter of a consumer transaction, made orally, in writing, or by electronic communication, by a supplier, are deceptive acts:

(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.

(2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.

(3) That such subject of a consumer transaction is new or unused, if it is not and if the supplier knows or should reasonably know that it is not.

(4) That such subject of a consumer transaction will be supplied to the public in greater quantity than the supplier intends or reasonably expects.

(5) That replacement or repair constituting the subject of a consumer transaction is needed, if it is not and if the supplier knows or should reasonably know that it is not.

(6) That a specific price advantage exists as to such subject of a consumer transaction, if it does not and if the supplier knows or should reasonably know that it does not.

(7) That the supplier has a sponsorship, approval, or affiliation in such consumer transaction the supplier does not have, and which the supplier knows or should reasonably know that the supplier does not have.

(8) That such consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies,

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or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.

(9) That the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a sale or lease in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit, rebate, or discount is contingent upon the occurrence of an event subsequent to the time the consumer agrees to the purchase or lease.

(10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know the supplier could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that the supplier will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

(11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

(12) That the replacement or repair constituting the subject of a consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the specified work is completed and:

(A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;

(B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);

(C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars (\$750); and

(D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:

(A) the customer has been notified that the work has been completed; and

(B) the part repaired or replaced has been made available for examination upon the request of the customer.

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(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing a fictitious business name or an assumed business name (as described in IC 23-15-1) in a local telephone directory if:

(A) the name misrepresents the supplier's geographic location;

(B) the listing fails to identify the locality and state of the supplier's business;

(C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and

(D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.

(16) The act of listing a fictitious business name or assumed business name (as described in IC 23-15-1) in a directory assistance data base if:

(A) the name misrepresents the supplier's geographic location;

(B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and

(C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.

(17) That the supplier violated IC 24-3-4 concerning cigarettes for import or export.

(18) That a supplier knowingly sells or resells a product to a consumer if the product has been recalled, whether by the order of a court or a regulatory body, or voluntarily by the manufacturer, distributor, or retailer unless the product has been repaired or modified to correct the defect that was the subject of the recall.

(19) That the supplier violated 47 U.S.C. 227, including any rules or regulations issued under 47 U.S.C. 227.

(b) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such

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representation is true if such other supplier shall know or have reason to know that such representation was false.

(c) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(d) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

(e) For purposes of subsection (a)(12), a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

(f) For purposes of subsection (a)(15), a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance data base unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

(g) For purposes of subsection (a)(18), it is an affirmative defense to any action brought under this chapter that the product has been altered by a person other than the defendant to render the product completely incapable of serving its original purpose.

(h) In addition to the acts set forth in subsection (a), a violation of IC 24-9 (concerning home loans) is a deceptive act under this chapter.

SECTION 34. IC 24-5-0.5-4, AS AMENDED BY P.L.85-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) **Except as provided in subsection (l)**, a person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act or five hundred dollars (\$500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of:

(1) three (3) times the actual damages of the consumer suffering

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1 the loss; or

2 (2) one thousand dollars (\$1,000).

3 Except as provided in subsection (j), the court may award reasonable
4 attorney fees to the party that prevails in an action under this
5 subsection. **Except for a deceptive act described in section 3(h) of**
6 **this chapter, and except for purchases of time shares and camping**
7 **club memberships,** this subsection does not apply to a consumer
8 transaction in real property, including a claim or action involving a
9 construction defect (as defined in IC 32-27-3-1(5)) brought against a
10 construction professional (as defined in IC 32-27-3-1(4)). ~~except for~~
11 ~~purchases of time shares and camping club memberships.~~ This
12 subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12,
13 or IC 24-5-14. Actual damages awarded to a person under this section
14 have priority over any civil penalty imposed under this chapter.

15 (b) Any person who is entitled to bring an action under subsection
16 (a) on the person's own behalf against a supplier for damages for a
17 deceptive act may bring a class action against such supplier on behalf
18 of any class of persons of which that person is a member and which has
19 been damaged by such deceptive act, subject to and under the Indiana
20 Rules of Trial Procedure governing class actions, except as herein
21 expressly provided. Except as provided in subsection (j), the court may
22 award reasonable attorney fees to the party that prevails in a class
23 action under this subsection, provided that such fee shall be determined
24 by the amount of time reasonably expended by the attorney and not by
25 the amount of the judgment, although the contingency of the fee may
26 be considered. Any money or other property recovered in a class action
27 under this subsection which cannot, with due diligence, be restored to
28 consumers within one (1) year after the judgment becomes final shall
29 be returned to the party depositing the same. **Except for a deceptive**
30 **act described in section 3(h) of this chapter, and except for**
31 **purchases of time shares and camping club memberships,** this
32 subsection does not apply to a consumer transaction in real property.
33 ~~except for purchases of time shares and camping club memberships.~~
34 Actual damages awarded to a class have priority over any civil penalty
35 imposed under this chapter.

36 (c) The attorney general may bring an action to enjoin a deceptive
37 act, **including a deceptive act described in section 3(h) of this**
38 **chapter.** However, **with respect to all other consumer transactions**
39 **involving real property,** the attorney general may seek to enjoin
40 patterns of incurable deceptive acts. ~~with respect to consumer~~
41 ~~transactions in real property.~~ In addition, the court may:

42 (1) issue an injunction;



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(2) order the supplier to make payment of the money unlawfully received from the aggrieved consumers to be held in escrow for distribution to aggrieved consumers;

(3) order the supplier to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action; and

(4) provide for the appointment of a receiver.

(d) In an action under subsection (a), (b), or (c), the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to aggrieved consumers.

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or any other party or parties to give security, or additional security, in such sum as the court shall direct to pay all costs, expenses, and disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

(f) **Except as provided in subsection (l)**, any person who violates the terms of an injunction issued under subsection (c) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (c) has been violated, the court shall award reasonable costs to the state.

(g) If a court finds any person has knowingly violated section 3 or 10 of this chapter, other than section 3(a)(19) **or 3(h)** of this chapter, the attorney general, in an action pursuant to subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding five thousand dollars (\$5,000) per violation.

(h) If a court finds that a person has violated section 3(a)(19) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty as follows:

(1) For a knowing or intentional violation, one thousand five hundred dollars (\$1,500).

(2) For a violation other than a knowing or intentional violation, five hundred dollars (\$500).

A civil penalty recovered under this subsection shall be deposited in the consumer protection division telephone solicitation fund

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established by IC 24-4.7-3-6 to be used for the administration and enforcement of section 3(a)(19) of this chapter.

(i) An elderly person relying upon an uncured or incurable deceptive act, including an act related to hypnotism, may bring an action to recover treble damages, if appropriate.

(j) An offer to cure is:

(1) not admissible as evidence in a proceeding initiated under this section unless the offer to cure is delivered by a supplier to the consumer or a representative of the consumer before the supplier files the supplier's initial response to a complaint; and

(2) only admissible as evidence in a proceeding initiated under this section to prove that a supplier is not liable for attorney's fees under subsection (k).

If the offer to cure is timely delivered by the supplier, the supplier may submit the offer to cure as evidence to prove in the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.

(k) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are incurred following the timely delivery of an offer to cure as described in subsection (j) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure.

(l) The following apply to a deceptive act described in section 3(h) of this chapter:

(1) A person aggrieved by an uncured or incurable deceptive act described in section 3(h) of this chapter may bring an action under subsection (a) for the damages actually suffered as a consumer as a result of the deceptive act. The court may increase damages for a willful deceptive act in an amount that does not exceed three (3) times the actual damages of the consumer suffering the loss.

(2) For a violation of an injunction issued under subsection (c), a civil penalty of not more than thirty thousand dollars (\$30,000) may be imposed under subsection (f).

(3) If a court finds any person has knowingly violated section 3(h) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding ten thousand dollars (\$10,000) per violation. A civil penalty recovered under this subdivision shall be deposited in the homeowner protection unit account established by IC 4-6-12-9.

SECTION 35. IC 24-5-0.5-8 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) **Except as provided in subsection (b),** a person who commits an incurable deceptive act is subject to a civil penalty of a fine of not more than five hundred dollars (\$500) for each violation. The attorney general, acting in the name of the state, has the exclusive right to petition for recovery of such a fine, and this fine may be recovered only in an action brought under section 4(c) of this chapter.

(b) **A person who commits an incurable deceptive act described in section 3(h) of this chapter is subject to a civil penalty of a fine of not more than one thousand dollars (\$1,000) for each violation. The attorney general, acting in the name of the state, has the exclusive right to petition for recovery of the fine, and the fine may be recovered only in an action brought under section 4(c) of this chapter.**

SECTION 36. IC 24-9-3-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1.1. (a) **For purposes of this section, a creditor conducts a "reasonable inquiry" concerning a borrower's ability to repay a loan if the creditor:**

(1) obtains a consumer report (as defined in IC 24-5-24-2) or other information maintained by a consumer reporting agency (as defined in IC 24-5-24-3) with respect to the prospective borrower; and

(2) obtains information about the prospective borrower through:

(A) a current or past employer of the prospective borrower;

(B) public records; or

(C) any other legal or commercially reasonable means.

(b) **As used in this section, "stated income or no documentation loan" means a home loan with respect to which a creditor:**

(1) relies solely on a prospective borrower's written or oral statement of the prospective borrower's creditworthiness; and

(2) does not independently verify the accuracy of the prospective borrower's statement by conducting a reasonable inquiry into the prospective borrower's creditworthiness;

in making an underwriting determination with respect to the prospective borrower.

(c) **A creditor may not do either of the following:**

(1) Recommend or issue a stated income or no documentation loan to a prospective borrower.

(2) Recommend or issue a home loan to a prospective

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borrower without first conducting a reasonable inquiry concerning the prospective borrower's ability to repay the home loan. A creditor, or any officer, agent, or employee of a creditor, that conducts a reasonable inquiry under this section is not liable to:

(A) a borrower or prospective borrower;

(B) a subsequent purchaser of a home that was the subject of a home loan on which a borrower has defaulted; or

(C) any other person;

if a borrower later defaults on a home loan issued by the creditor.

SECTION 37. IC 24-9-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 6. (a) A creditor may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a written release upon prepayment. A creditor must provide a payoff balance not later than ten (10) ~~business~~ **calendar** days after the request is received by the creditor. ~~(b)~~ For purposes of this ~~section~~, **subsection**, "fee" does not include actual charges incurred by a creditor for express or priority delivery ~~requested by the borrower~~ of home loan documents to the borrower ~~if such delivery is requested by the borrower~~.

(b) This subsection applies to a home loan with respect to which any installment or minimum payment due is delinquent for at least ten (10) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than twenty (20) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a home loan is sold for an amount that is less than the amount of the borrower's outstanding obligation on the home loan. A creditor, a servicer, or a creditor's agent that fails to respond to an offer within the time prescribed by this subsection is liable:

(1) under the terms set forth in IC 24-4.5-3-209(3), as if the

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1 creditor, servicer, or agent had failed to provide a consumer
 2 loan payoff amount; and
 3 (2) in accordance with 12 U.S.C. 2605(f) in any action brought
 4 under that section.

5 SECTION 38. IC 24-9-4-8 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) A creditor may
 7 not make a high cost home loan without regard to repayment ability.

8 (b) If a creditor presents evidence that the creditor:

9 (1) followed commercially reasonable practices in determining
 10 the borrower's debt to income ratio; and

11 (2) conducted a reasonable inquiry concerning the borrower's
 12 ability to repay the high cost home loan under IC 24-9-3-1.1;
 13 there is a rebuttable presumption that the creditor made the high cost
 14 home loan with due regard to repayment ability. For purposes of this
 15 section, there is a rebuttable presumption that the borrower's statement
 16 of income provided to the creditor is true and complete.

17 (c) For purposes of subsection (b)(1), commercially reasonable
 18 practices include the use of:

19 (1) the debt to income ratio:

20 (A) listed in 38 CFR 36.4337(c)(1); and

21 (B) defined in 38 CFR 36.4337(d); and

22 (2) the residual income guidelines established under:

23 (A) 38 CFR 36.4337(e); and

24 (B) United States Department of Veterans Affairs form
 25 26-6393.

26 SECTION 39. IC 24-9-4.5 IS ADDED TO THE INDIANA CODE
 27 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2008]:

29 **Chapter 4.5. Residential Real Estate Closings**

30 **Sec. 1. This chapter applies to a home loan closing that takes**
 31 **place after June 30, 2008.**

32 **Sec. 2. As used in this chapter, "closing documents" refers to the**
 33 **documents that a settlement service provider is required to provide**
 34 **to a borrower at or before the closing of a home loan, in**
 35 **accordance with the requirements of the federal Real Estate**
 36 **Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended.**

37 **Sec. 3. (a) As used in this chapter, "settlement service provider"**
 38 **means a person that provides services in connection with the**
 39 **closing of a real estate transaction, including the provision of title**
 40 **examinations or title insurance.**

41 **(b) The term includes a closing agent (as defined in**
 42 **IC 6-1.1-12-43(a)(2)).**

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1 Sec. 4. A creditor shall provide a prospective borrower with a
 2 notice that states that the prospective borrower has a right to
 3 receive, at least forty-eight (48) hours before the closing of a home
 4 loan, the closing documents with respect to the home loan. The
 5 creditor shall provide the notice required by this section at the
 6 same time that the creditor provides the good faith estimates
 7 required under the federal Real Estate Settlement Procedures Act
 8 (12 U.S.C. 2601 et seq.) as amended.

9 Sec. 5. (a) Subject to subsections (b) and (c), not later than
 10 forty-eight (48) hours before the closing of a home loan, a
 11 settlement service provider shall make available to the borrower
 12 the closing documents with respect to the home loan. The
 13 settlement service provider shall make the closing documents
 14 available to the borrower:

- 15 (1) at the office of the creditor or the settlement service
- 16 provider;
- 17 (2) through the United States mail;
- 18 (3) by facsimile; or
- 19 (4) through any other commercially reasonable means.

20 (b) A settlement service provider's duty to make closing
 21 documents available to a borrower within the time set forth in
 22 subsection (a) applies only to the extent that the settlement service
 23 provider is able to obtain the closing documents from the creditor
 24 making the home loan. However, a settlement service provider is
 25 not relieved of the settlement service provider's duty under
 26 subsection (a) unless the settlement service provider first makes a
 27 good faith effort to obtain the closing documents from the creditor
 28 so as to allow the settlement service provider to in turn provide the
 29 documents to the borrower within the time set forth in subsection
 30 (a). If, after a good faith effort by the settlement service provider
 31 to obtain the closing documents from the creditor as required
 32 under this subsection, the creditor provides a set of closing
 33 documents that is not complete, the settlement service provider
 34 shall provide written notice to the borrower of that fact at the same
 35 time that the settlement service provider makes the closing
 36 documents available to the borrower under subsection (a).

37 (c) A borrower may waive the right to receive the closing
 38 documents with respect to a home loan by providing a written
 39 notice of waiver to the settlement service provider at or before the
 40 time of closing.

41 (d) If the borrower does not receive the closing documents for
 42 a home loan within the time set forth in subsection (a), the

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borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the loan or, in the case of a purchase money home loan, into the purchase contract.

(e) If the terms of the home loan set forth in the closing documents made available to the borrower under subsection (a) differ from the terms of the home loan presented to the borrower at the time of the closing, the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the loan or, in the case of a purchase money home loan, into the purchase contract. For purposes of this subsection, "terms", with respect to a home loan, include any of the following:

- (1) The total loan amount.
- (2) The loan's rate, including the trigger rate.
- (3) Points and fees.
- (4) Payment amounts and schedules.
- (5) The term or duration of the loan.
- (6) Prepayment penalties, if any.
- (7) Acceleration provisions.
- (8) Servicing of the loan.
- (9) Other provisions concerning the rights and responsibilities of the parties to the home loan.

Sec. 6. (a) A settlement service provider is subject to a civil penalty of twenty-five dollars (\$25) for each instance in which the settlement service provider fails to make closing documents available to a borrower as required by section 5 of this chapter, unless:

- (1) the creditor making the home loan fails to provide the closing documents despite the settlement service provider's good faith efforts to obtain the closing documents, as required under section 5(b) of this chapter; or
 - (2) the borrower has waived the borrower's right to receive the closing documents under section 5(c) of this chapter.
- (b) A penalty described in subsection (a):
- (1) may be enforced by the state agency that has administrative jurisdiction over the settlement service provider in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and
 - (2) shall be paid into the property tax replacement fund.

(c) A settlement service provider is not liable for any other damages claimed by a customer because of the settlement service

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provider's failure to comply with this chapter.

SECTION 40. IC 24-9-5-4, AS AMENDED BY P.L.3-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) A person who violates this article is liable to a person who is a party to the home loan transaction that gave rise to the violation for the following:

(1) Actual damages, including consequential damages. A person is not required to demonstrate reliance in order to receive actual damages.

(2) Statutory damages equal to ~~two (2)~~ **four (4)** times the finance charges agreed to in the home loan agreement.

(3) Costs and reasonable attorney's fees.

(b) A person may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

(c) The right of rescission granted under 15 U.S.C. 1601 et seq. for a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et seq.) is available to a person acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a home loan at any time during the term of the loan. Any recoupment claim asserted under this provision is limited to the amount required to reduce or extinguish the person's liability under the home loan plus amounts required to recover costs, including reasonable attorney's fees. This article shall not be construed to limit the recoupment rights available to a person under any other law.

(d) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a person. Except as provided in subsection (e), a person is not required to exhaust any administrative remedies under this article or under any other applicable law.

(e) Before bringing an action regarding an alleged deceptive act under this chapter, a person must:

(1) notify the homeowner protection unit established by IC 4-6-12-2 of the alleged violation giving rise to the action; and

(2) allow the homeowner protection unit at least ninety (90) days to institute appropriate administrative and civil action to redress a violation.

(f) An action under this chapter must be brought within five (5) years after the date that the person knew, or by the exercise of reasonable diligence should have known, of the violation of this article.

(g) An award of damages under subsection (a) has priority over a civil penalty imposed under this article.

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SECTION 41. IC 24-9-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. A person who knowingly or intentionally violates this article commits:

- (1) a Class ~~A misdemeanor~~; **D felony**; and
- (2) an act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

SECTION 42. IC 24-9-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

- (1) issue an injunction;
- (2) order a person to make restitution;
- (3) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this article; and
- (4) impose a civil penalty of not more than ~~ten~~ **twenty** thousand dollars ~~(\$10,000)~~ **(\$20,000)** per violation.

(b) A person who violates an injunction under this section is subject to a civil penalty of not more than ~~ten~~ **twenty** thousand dollars ~~(\$10,000)~~ **(\$20,000)** per violation.

(c) The court that issues an injunction retains jurisdiction over a proceeding seeking the imposition of a civil penalty under this section.

SECTION 43. IC 25-34.1-8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) To be licensed or certified as a real estate appraiser, an individual must meet the following conditions:

- (1) Not have a conviction for any of the following:
 - (A) An act that would constitute a ground for disciplinary sanction under IC 25-1-11.
 - (B) A crime that has a direct bearing on the individual's ability to practice competently.
 - (C) Fraud or material deception in the course of professional services or activities.
 - (D) A crime that indicates the individual has the propensity to endanger the public.
- (2) Have satisfied the requirements established under IC 25-34.1-3-8(f).

(b) **After June 30, 2008, the board shall require each applicant for initial licensure or certification under this chapter to submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the board in determining whether the applicant should**

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1 be denied licensure or certification under this chapter for any
 2 reason set forth in subsection (a)(1). The applicant shall pay any
 3 fees or costs associated with the fingerprints and background check
 4 required under this subsection. The board may not release the
 5 results of a background check described in this subsection to any
 6 private entity.

7 (c) The board may request evidence of compliance with this
 8 section in accordance with subsection (d). Evidence of compliance
 9 with this section may include any of the following:

10 (1) Subject to subsections (b) and (d)(2), criminal background
 11 checks, including a national criminal history background
 12 check (as defined in IC 10-13-3-12) by the Federal Bureau of
 13 Investigation.

14 (2) Credit histories.

15 (3) Other background checks considered necessary by the
 16 board.

17 (d) The board may request evidence of compliance with this
 18 section at any of the following times:

19 (1) The time of application for an initial license or certificate.

20 (2) The time of renewal of a license or certificate.

21 (3) Any other time considered necessary by the board.

22 (e) The commission, upon recommendation of the board, shall
 23 adopt rules under IC 4-22-2 to implement this section.

24 SECTION 44. IC 27-7-3-15.5 IS ADDED TO THE INDIANA
 25 CODE AS A NEW SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE UPON PASSAGE]: Sec. 15.5. (a) This section applies
 27 to a transaction that:

28 (1) is a single family residential:

29 (A) first lien purchase money mortgage transaction; or

30 (B) refinancing transaction; and

31 (2) is closed after December 31, 2009.

32 (b) Not later than September 1, 2009, the department shall
 33 establish and maintain an electronic system for the collection and
 34 storage of the following information concerning any of the
 35 following persons that have participated in or assisted with a
 36 transaction to which this section applies, or that will participate in
 37 or assist with a transaction to which this section applies:

38 (1) The name and license number (under IC 23-2-5) of each
 39 loan brokerage business involved in the transaction.

40 (2) The name and registration number (under IC 23-2-5) of
 41 each originator involved in the transaction.

42 (3) The name and license number (under IC 25-34.1) of each:

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(A) principal broker; and

(B) salesperson or broker-salesperson, if any;
involved in the transaction.

(4) The name and certificate number (under this chapter) of each title insurance company involved in the transaction.

(5) The name and license number (under IC 27-1-15.6) of each title insurance agent involved in the transaction.

(6) The name and:

(A) license or certificate number (under IC 25-34.1-3-8) of each licensed or certified real estate appraiser; or

(B) license number (under IC 25-34.1) of each broker; who appraises the property that is the subject of the transaction.

(7) The name of the mortgagee and, if the mortgagee is required to be licensed under IC 24-4.5-3-502, the license number of the mortgagee.

(c) The system established by the department under this section must include a form that:

(1) is uniformly accessible in an electronic format to the closing agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and

(2) allows the closing agent to:

(A) input the information described in subsection (b) with respect to each person described in subsection (b) that participates in or assists with the transaction, to the extent determinable; and

(B) submit the form electronically to a data base maintained by the department.

(d) Subject to subsection (e), the department shall make the information stored in the data base described in subsection (c)(2)(B) accessible to:

(1) each entity described in IC 4-6-12-4; and

(2) the homeowner protection unit established under IC 4-6-12-2.

(e) The department, a closing agent who submits a form under subsection (c), each entity described in IC 4-6-12-4, and the homeowner protection unit established under IC 4-6-12-2 shall exercise all necessary caution to avoid disclosure of any information:

(1) concerning a person described in subsection (b), including the person's license, registration, or certificate number; and

(2) contained in the data base described in subsection

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(c)(2)(B);
except to the extent required or authorized by state or federal law.

SECTION 45. IC 34-30-2-96.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 96.7. IC 24-9-3-1.1 (Concerning a creditor's reasonable inquiry concerning a prospective borrower's ability to repay a home loan.)**

SECTION 46. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "task force" refers to the mortgage lending and fraud prevention task force created under subsection (b).

(b) Not later than May 1, 2008, the following agencies shall create the mortgage lending and fraud prevention task force by each appointing an equal number of representatives to serve on the task force:

(1) The securities division of the office of the secretary of state established under IC 23-19-6-1(a).

(2) The homeowner protection unit established by the attorney general under IC 4-6-12-2.

(3) The department of financial institutions established by IC 28-11-1-1.

(4) The department of insurance created by IC 27-1-1-1.

(5) The Indiana real estate commission created by IC 25-34.1-2-1.

(6) The real estate appraiser licensure and certification board created by IC 25-34.1-8-1.

(c) The members of the task force shall annually appoint a chair from among the members of the task force. Each year, the chair shall rotate among the agencies set forth in subsection (b).

(d) Subject to subsection (e), beginning not later than July 2008, the task force shall meet each month to:

(1) coordinate the state's efforts to:

(A) regulate the various participants involved in originating, issuing, and closing home loans;

(B) enforce state laws and rules concerning mortgage lending practices and mortgage fraud; and

(C) prevent fraudulent practices in the home loan industry and investigate and prosecute cases involving mortgage fraud; and

(2) share information and resources necessary for the efficient administration of the tasks set forth in subdivision (1).

(e) With respect to any meeting of the task force:

(1) one (1) or more members of the task force may participate

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1 in the meeting; or

2 (2) the meeting may be conducted in its entirety;
3 by means of a conference telephone or similar communications
4 equipment by which all persons participating in the meeting can
5 communicate with each other. Participation by the means
6 described in this subsection constitutes presence in person at the
7 meeting.

8 (f) Beginning in 2008, not later than November 1 of each year,
9 the task force shall report to the legislative council on the activities
10 of the task force during the most recent state fiscal year. The
11 report required under this subsection must include:

12 (1) information on the regulatory activities of each agency
13 described in subsection (b), including a description of any:

14 (A) investigations conducted; or

15 (B) disciplinary actions taken or criminal prosecutions
16 pursued;

17 with respect to the professions involved in originating, issuing,
18 and closing home loans;

19 (2) a description of any challenges:

20 (A) encountered by the task force during the most recent
21 state fiscal year; or

22 (B) anticipated by the task force in the current state fiscal
23 year;

24 in carrying out the duties set forth in subsection (d);

25 (3) any additional information required by the legislative
26 council; and

27 (4) any recommendations by the task force for legislation
28 necessary to assist the task force in carrying out the duties set
29 forth in subsection (d).

30 A report to the legislative council under this subsection must be in
31 an electronic format under IC 5-14-6.

32 SECTION 47. [EFFECTIVE UPON PASSAGE] (a) As used in this
33 SECTION, "authority" refers to the Indiana housing and
34 community development authority created by IC 5-20-1-3.

35 (b) As used in this SECTION, "mortgage transaction" refers to
36 a first lien mortgage transaction (as defined in IC 24-4.4-1-301(6)).

37 (c) Not later than November 1, 2008, the authority shall provide
38 a report to the legislative council that includes the following:

39 (1) An identification of:

40 (A) new sources of funding that can be used to assist
41 Indiana homeowners in refinancing their existing
42 mortgage transactions; or

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(B) existing sources of funding that can be directed or redirected to assist Indiana homeowners in refinancing their existing mortgage transactions; in order to prevent the foreclosure of the homes secured by homeowners' existing mortgage transactions.

(2) A plan for the rehabilitation of neighborhoods or communities in Indiana that have been adversely or disproportionately affected by mortgage foreclosures. The plan required by this subdivision must include an identification of the following:

(A) The areas in Indiana that have been adversely or disproportionately affected by mortgage foreclosures, including any statistics or data used to identify the areas.

(B) New or existing sources of funding that can be directed or redirected to the proposed rehabilitation efforts.

(3) Any recommendations for legislation that the authority determines is needed to accomplish the objectives described in subdivisions (1) and (2).

(4) Any other recommendations of the authority concerning:

(A) the prevention of mortgage foreclosures; or

(B) the rehabilitation of neighborhoods or communities adversely or disproportionately affected by mortgage foreclosures.

(d) The report to the legislative council required by this SECTION must be in an electronic format under IC 5-14-6.

(e) This SECTION expires January 1, 2010.

SECTION 48. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commissioner" refers to the securities commissioner appointed under IC 23-19-6-1.

(b) As used in this SECTION, "director" refers to the director of the department of financial institutions appointed under IC 28-11-2-1.

(c) The commissioner and the director shall cooperate to determine the appropriate state agency or department to oversee the regulation of a person that is, has been, or may be subject to regulation, licensure, or registration under both:

(1) IC 23-2-5; and

(2) IC 24-4.5, as amended by this act.

(d) The commissioner and the director shall issue joint guidelines to address the appropriate regulation of a person described in subsection (c) not later than September 1, 2008. The joint guidelines issued under this subsection must include any

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1 recommendations for legislation needed to implement the
 2 appropriate regulation of a person described in subsection (c), as
 3 determined by the commissioner and the director.

4 (e) This SECTION expires January 1, 2010.

5 SECTION 49. [EFFECTIVE UPON PASSAGE] (a) As used in this
 6 SECTION, "board" refers to the real estate appraiser licensure
 7 and certification board created by IC 25-34.1-8-1.

8 (b) As used in this SECTION, "commission" refers to the
 9 Indiana real estate commission created by IC 25-34.1-2-1.

10 (c) Notwithstanding IC 25-34.1-8-10(e), as added by this act, the
 11 commission shall adopt rules to implement IC 25-34.1-8-10, as
 12 amended by this act, in the same manner as emergency rules are
 13 adopted under IC 4-22-2-37.1. Not later than May 1, 2008, the
 14 board shall make recommendations to the commission concerning
 15 the rules needed to implement IC 25-34.1-8-10, as amended by this
 16 act. The commission shall adopt any emergency rules under this
 17 SECTION not later than June 1, 2008. An emergency rule adopted
 18 under this SECTION:

19 (1) takes effect on July 1, 2008; and

20 (2) expires on the earlier of:

21 (A) the date the rule is adopted by the commission under
 22 IC 4-22-2-24 through IC 4-22-2-36; or

23 (B) January 1, 2010.

24 (d) This SECTION expires January 1, 2010.

25 SECTION 50. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 89, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 19, delete lines 32 through 42.

and when so amended that said bill do pass.

(Reference is to SB 89 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 7, Nays 0.

SENATE MOTION

Madam President: I move that Senator Young R Michael be added as second author of Senate Bill 89.

LAWSON C

SENATE MOTION

Madam President: I move that Senate Bill 89 be amended to read as follows:

Page 19, line 26, delete "." and insert "**, unless that personal information is currently being used in an activity authorized by the borrowers or prospective borrowers under one (1) or more of the following circumstances:**

(A) The personal information is included on an application or other form sent as part of an application process or an enrollment process.

(B) The personal information is used to obtain a credit report on an applicant for credit.

(C) The personal information is used to establish, amend, maintain, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this section may not be printed in whole or in part on a

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postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or mailer without the envelope or mailer being opened."

Page 19, line 30, after "borrowers" insert **"except as authorized in this section"**.

(Reference is to SB 89 as printed January 16, 2008.)

LAWSON C

SENATE MOTION

Madam President: I move that Senator Young R Michael be removed as second author of Engrossed Senate Bill 89.

YOUNG R MICHAEL

SENATE MOTION

Madam President: I move that Senator Paul be added as coauthor of Engrossed Senate Bill 89.

LAWSON C

SENATE MOTION

Madam President: I move that Senator Lanane be added as second author, Senator Young R Michael be added as third author, and Senators Zakas, Steele, and Drozda be added as coauthors of Engrossed Senate Bill 89.

LAWSON C

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 89, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-6-12-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3.5. (a) Not later than July 1, 2008, the unit shall establish a toll free telephone number to receive calls from persons having information about suspected fraudulent:**

- (1) mortgage lending practices;**
- (2) real estate appraisals; or**
- (3) other practices;**

involving residential real estate transactions.

(b) The toll free telephone number required by this section shall be staffed by:

- (1) employees or investigators of the unit who have knowledge of the laws concerning:**
 - (A) mortgage lending practices;**
 - (B) real estate appraisals; or**
 - (C) other practices;**

involving residential real estate transactions;

- (2) representatives of any of the entities described in section 4(a)(8) through 4(a)(10) of this chapter who have knowledge of the laws concerning:**

- (A) mortgage lending practices;**
- (B) real estate appraisals; or**
- (C) other practices;**

involving residential real estate transactions; or

- (3) a combination of persons described in subdivisions (1) and (2).**

The attorney general shall designate persons to staff the toll free telephone number as required by this subsection.

(c) The persons designated by the attorney general under subsection (b) to staff the toll free telephone number required by this section shall ensure that any information received from callers to the telephone number is shared with any entity described in section 4 of this chapter that has jurisdiction over the matter reported. The unit shall establish uniform procedures for:

- (1) responding to calls received;**

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(2) protecting:

(A) the anonymity of callers who wish to report information anonymously; or

(B) the identity of callers who request that their identity not be disclosed;

(3) documenting and verifying information reported by callers; and**(4) transmitting reported information to the appropriate entities described in section 4 of this chapter.**

(d) The unit shall publicize the availability of the toll free telephone number established under this section in a manner reasonably designed to reach members of the public.

SECTION 2. IC 4-6-12-8, AS AMENDED BY P.L.181-2006, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. The unit shall cooperate with the Indiana housing and community development authority in the development and implementation of the home ownership education programs established under ~~IC 5-20-1-4(f)~~ **IC 5-20-1-4(d)**.

SECTION 3. IC 4-6-12-9, AS AMENDED BY P.L.64-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) The homeowner protection unit account within the general fund is established to support the operations of the unit. The account is administered by the attorney general.

(b) The homeowner protection unit account consists of:

(1) fees collected under IC 24-9-9; and

(2) civil penalties collected under IC 24-5-0.5-4(l)(3).

(c) The expenses of administering the homeowner protection unit account shall be paid from money in the account.

(d) The treasurer of state shall invest the money in the homeowner protection unit account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

(e) Money in the homeowner protection unit account at the end of a state fiscal year does not revert to the state general fund.

SECTION 4. IC 5-20-1-4, AS AMENDED BY P.L.99-2007, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) The authority has all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the power:

(1) to make or participate in the making of construction loans to sponsors of for multiple family residential housing that is federally assisted or assisted by a government sponsored enterprise, such as the Federal National Mortgage Association,

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the Federal Home Loan Mortgage Corporation, or the Federal Agricultural Mortgage Corporation, the Federal Home Loan Bank, and other similar entities under terms that are approved by the authority;

(2) to make or participate in the making of mortgage loans to sponsors of for multiple family residential housing that is federally assisted or assisted by a government sponsored enterprise, such as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Agricultural Mortgage Corporation, the Federal Home Loan Bank, and other similar entities under terms that are approved by the authority;

(3) to purchase or participate in the purchase from mortgage lenders of mortgage loans made to persons of low and moderate income for residential housing;

(4) to make loans to mortgage lenders for the purpose of furnishing funds to such mortgage lenders to be used for making mortgage loans for persons and families of low and moderate income. However, the obligation to repay loans to mortgage lenders shall be general obligations of the respective mortgage lenders and shall bear such date or dates, shall mature at such time or times, shall be evidenced by such note, bond, or other certificate of indebtedness, shall be subject to prepayment, and shall contain such other provisions consistent with the purposes of this chapter as the authority shall by rule or resolution determine;

(5) to collect and pay reasonable fees and charges in connection with making, purchasing, and servicing of its loans, notes, bonds, commitments, and other evidences of indebtedness;

(6) to acquire real property, or any interest in real property, by conveyance, including purchase in lieu of foreclosure, or foreclosure, to own, manage, operate, hold, clear, improve, and rehabilitate such real property and sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber such real property where such use of real property is necessary or appropriate to the purposes of the authority;

(7) to sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction loan, a land development loan, a mortgage loan, or a loan of any type permitted by this chapter;

(8) to procure insurance against any loss in connection with its operations in such amounts and from such insurers as it may deem

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necessary or desirable;

(9) to consent, subject to the provisions of any contract with noteholders or bondholders which may then exist, whenever it deems it necessary or desirable in the fulfillment of its purposes to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any mortgage loan, mortgage loan commitment, construction loan, loan to lender, or contract or agreement of any kind to which the authority is a party;

(10) to enter into agreements or other transactions with any federal, state, or local governmental agency for the purpose of providing adequate living quarters for such persons and families in cities and counties where a need has been found for such housing;

(11) to include in any borrowing such amounts as may be deemed necessary by the authority to pay financing charges, interest on the obligations (for a period not exceeding the period of construction and a reasonable time thereafter or if the housing is completed, two (2) years from the date of issue of the obligations), consultant, advisory, and legal fees and such other expenses as are necessary or incident to such borrowing;

(12) to make and publish rules respecting its lending programs and such other rules as are necessary to effectuate the purposes of this chapter;

(13) to provide technical and advisory services to sponsors, builders, and developers of residential housing and to residents and potential residents, including housing selection and purchase procedures, family budgeting, property use and maintenance, household management, and utilization of community resources;

(14) to promote research and development in scientific methods of constructing low cost residential housing of high durability;

(15) to encourage community organizations to participate in residential housing development;

(16) to make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, limited liability company, or other organization or entity necessary or convenient to accomplish the purposes of this chapter;

(17) to accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance and any other aid from any source whatsoever and to agree to, and to comply with, conditions attached thereto;

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(18) to sue and be sued in its own name, plead and be impleaded;
 (19) to maintain an office in the city of Indianapolis and at such other place or places as it may determine;

(20) to adopt an official seal and alter the same at pleasure;

(21) to adopt and from time to time amend and repeal bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules and policies in connection with the performance of its functions and duties;

(22) to employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor;

(23) notwithstanding IC 5-13, but subject to the requirements of any trust agreement entered into by the authority, to invest:

(A) the authority's money, funds, and accounts;

(B) any money, funds, and accounts in the authority's custody; and

(C) proceeds of bonds or notes;

in the manner provided by an investment policy established by resolution of the authority;

(24) to make or participate in the making of construction loans, mortgage loans, or both, to individuals, partnerships, limited liability companies, corporations, and organizations for the construction of residential facilities for individuals with a developmental disability or for individuals with a mental illness or for the acquisition or renovation, or both, of a facility to make it suitable for use as a new residential facility for individuals with a developmental disability or for individuals with a mental illness;

(25) to make or participate in the making of construction and mortgage loans to individuals, partnerships, corporations, limited liability companies, and organizations for the construction, rehabilitation, or acquisition of residential facilities for children;

(26) to purchase or participate in the purchase of mortgage loans from:

(A) public utilities (as defined in IC 8-1-2-1); or

(B) municipally owned gas utility systems organized under IC 8-1.5;

if those mortgage loans were made for the purpose of insulating and otherwise weatherizing single family residences in order to conserve energy used to heat and cool those residences;

(27) to provide financial assistance to mutual housing

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associations (IC 5-20-3) in the form of grants, loans, or a combination of grants and loans for the development of housing for low and moderate income families;

(28) to service mortgage loans made or acquired by the authority and to impose and collect reasonable fees and charges in connection with such servicing;

(29) subject to the authority's investment policy, to enter into swap agreements (as defined in IC 8-9.5-9-4) in accordance with IC 8-9.5-9-5 and IC 8-9.5-9-7;

(30) to promote and foster community revitalization through community services and real estate development;

(31) to coordinate and establish linkages between governmental and other social services programs to ensure the effective delivery of services to low income individuals;

(32) to cooperate with local housing officials and plan commissions in the development of projects that the officials or commissions have under consideration;

(33) to take actions necessary to implement its powers that the authority determines to be appropriate and necessary to ensure the availability of state or federal financial assistance; and

(34) to administer any program or money designated by the state or available from the federal government or other sources that is consistent with the authority's powers and duties.

The omission of a power from the list in this subsection does not imply that the authority lacks that power. The authority may exercise any power that is not listed in this subsection but is consistent with the powers listed in this subsection to the extent that the power is not expressly denied by the Constitution of the State of Indiana or by another statute.

(b) The authority shall ~~structure and administer any program conducted~~ **ensure that a mortgage loan acquired by the authority under subsection (a)(3) or made by a mortgage lender with funds provided by the authority under subsection (a)(4) in order to assure that no mortgage loan shall** ~~is not~~ knowingly be made to a person whose adjusted family income, ~~shall exceed as determined by the authority, exceeds~~ one hundred twenty-five percent (125%) of the median income for the geographic area ~~within which the person resides and at least forty percent (40%) of the mortgage loans so financed shall be for persons whose adjusted family income shall be below eighty percent (80%) of the median income for such area.~~ **involved. However, if the authority determines that additional encouragement is needed for the development of the geographic**

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area involved, a mortgage loan acquired or made under subsection (a)(3) or (a)(4) may be made to a person whose adjusted family income, as determined by the authority, does not exceed one hundred forty percent (140%) of the median income for the geographic area involved. The authority shall establish procedures that the authority determines are appropriate to structure and administer any program conducted under subsection (a)(3) or (a)(4) for the purpose of acquiring or making mortgage loans to persons of low or moderate income. In determining what constitutes low income, moderate income, or median income for purposes of any program conducted under subsection (a)(3) or (a)(4), the authority shall consider:

- (1) the appropriate geographic area in which to measure income levels; and
 - (2) the appropriate method of calculating low income, moderate income, or median income levels including:
 - (A) sources of;
 - (B) exclusions from; and
 - (C) adjustments to;
- income.

(c) In addition to the powers set forth in subsection (a), the authority may, with the proceeds of bonds and notes sold to retirement plans covered by IC 5-10-1.7, structure and administer a program of purchasing or participating in the purchasing from mortgage lenders of mortgage loans made to qualified members of retirement plans and other individuals. The authority shall structure and administer any program conducted under this subsection to assure that:

- (1) each mortgage loan is made as a first mortgage loan for real property:
 - (A) that is a single family dwelling, including a condominium or townhouse, located in Indiana;
 - (B) for a purchase price of not more than ninety-five thousand dollars (\$95,000);
 - (C) to be used as the purchaser's principal residence; and
 - (D) for which the purchaser has made a down payment in an amount determined by the authority;
- (2) no mortgage loan exceeds seventy-five thousand dollars (\$75,000);
- (3) any bonds or notes issued which are backed by mortgage loans purchased by the authority under this subsection shall be offered for sale to the retirement plans covered by IC 5-10-1.7; and
- (4) qualified members of a retirement plan shall be given

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preference with respect to the mortgage loans that in the aggregate do not exceed the amount invested by their retirement plan in bonds and notes issued by the authority that are backed by mortgage loans purchased by the authority under this subsection:

(d) As used in this section, "a qualified member of a retirement plan" means an active or retired member:

(1) of a retirement plan covered by IC 5-10-1.7 that has invested in bonds and notes issued by the authority that are backed by mortgage loans purchased by the authority under subsection (c); and

(2) who for a minimum of two (2) years preceding the member's application for a mortgage loan has:

(A) been a full-time state employee; teacher; judge; police officer; or firefighter;

(B) been a full-time employee of a political subdivision participating in the public employees' retirement fund;

(C) been receiving retirement benefits from the retirement plan; or

(D) a combination of employment and receipt of retirement benefits equaling at least two (2) years.

(e) (c) The authority, when directed by the governor, shall administer programs and funds under 42 U.S.C. 1437 et seq.

(f) (d) The authority shall identify, promote, assist, and fund home ownership education programs conducted throughout Indiana by nonprofit counseling agencies certified by the authority using funds appropriated under section 27 of this chapter. The attorney general and the entities listed in IC 4-6-12-4(a)(1) through IC 4-6-12-4(a)(10) shall cooperate with the authority in implementing this subsection.

SECTION 5. IC 5-20-1-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4.5. (a) As used in this section, "person with a disability" means a person who, by reason of physical, mental, or emotional defect or infirmity, whether congenital or acquired by accident, injury, or disease, is totally or partially prevented from achieving the fullest attainable physical, social, economic, mental, and vocational participation in the normal process of living. "special needs populations" include the following:

- (1) Persons with physical or developmental disabilities.
- (2) Persons with mental impairments.
- (3) Single parent households.
- (4) Victims of domestic violence.
- (5) Abused children.
- (6) Persons with chemical addictions.



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(7) Homeless persons.**(8) The elderly.**

(b) As used in this section, "qualified building" means a building:

- (1) that is used or will be used to provide residential housing for ~~persons with disabilities;~~ **special needs populations;** and
- (2) for which a taxpayer is eligible to claim a low income housing credit under 26 U.S.C. 42.

(c) Subject to subsection (d), the authority shall allocate to qualified buildings at least ten percent (10%) of the total dollar amount of federal low income housing credits allocated to the authority under 26 U.S.C. 42. The authority shall allocate credits under this section based on the proportionate amount of a qualified building that is used to provide residential housing for ~~persons with disabilities;~~ **special needs populations,** as determined by the authority.

(d) The authority shall hold available the allocation made under subsection (c) for qualified buildings through October 31 of each calendar year. Beginning November 1 of each calendar year, any part of the allocation that remains unassigned shall be available for any appropriate use under 26 U.S.C. 42.

SECTION 6. IC 5-20-1-8, AS AMENDED BY P.L.235-2005, SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) Subject to the approval of the ~~governor;~~ **public finance director appointed under IC 4-4-11-9,** the authority is hereby authorized to issue bonds or notes, or a combination thereof, to carry out and effectuate its purposes and powers. The principal of, and the interest on, such bonds or notes shall be payable solely from the funds provided for such payment in this chapter. The authority may secure the repayment of such bonds and notes by the pledge of mortgages and notes of others, revenues derived from operations and loan repayments, the proceeds of its bonds, and any available revenues or assets of the authority. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the authority, at such price or prices and under such terms and conditions as may be determined by the authority. Any such bonds or notes shall bear interest at such rate or rates as may be determined by the authority. Notes shall mature at such time or times not exceeding ten (10) years from their date or dates, and bonds shall mature at such time or times not exceeding forty-five (45) years from their date or dates, as may be determined by the authority. The authority shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and

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interest, which may be any bank or trust company within or outside the state. In case any officer whose signature, or a facsimile of whose signature, shall appear on any bonds or notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if ~~he~~ **the person** had remained in office until such delivery. The authority may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the approval of a resolution of the authority authorizing the sale of its bonds or notes, such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the authority shall determine to be for the best interest of the authority and to best effectuate the purposes of this chapter.

(b) The proceeds of any bonds or notes shall be used solely for the purposes for which they are issued. The proceeds shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or notes or in the trust agreement securing the same.

(c) Prior to the preparation of definitive bonds, the authority may, under like restrictions and subject to the approval of the ~~governor~~, **public finance director appointed under IC 4-4-11-9**, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(d) The authority shall cooperate with and use the assistance of the Indiana finance authority established under IC 4-4-11 in the issuance of the bonds or notes.

SECTION 7. IC 5-20-1-18, AS AMENDED BY P.L.235-2005, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. The authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the ~~governor~~, **public finance director appointed under IC 4-4-11-9**, the budget committee, and the general assembly. An annual report submitted under this section to the general assembly

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must be in an electronic format under IC 5-14-6. The report shall set forth a complete operating and financial statement of the authority during such year, and a copy of such report shall be available to inspection by the public at the Indianapolis office of the authority. The authority shall cause an audit of its books and accounts to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available money of the authority.

SECTION 8. IC 5-20-1-27, AS AMENDED BY P.L.181-2006, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 27. (a) The home ownership education account within the state general fund is established to support the home ownership education programs established under section ~~4(f)~~ **4(d)** of this chapter. The account is administered by the authority.

(b) The home ownership education account consists of fees collected under IC 24-9-9.

(c) The expenses of administering the home ownership education account shall be paid from money in the ~~fund~~ **account**.

(d) The treasurer of state shall invest the money in the home ownership education account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

SECTION 9. IC 5-20-3-4, AS AMENDED BY P.L.181-2006, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) A mutual housing association may be established as a nonprofit corporation incorporated under IC 23-7-1.1 (before its repeal on August 1, 1991) or IC 23-17 to prevent and eliminate neighborhood deterioration and to preserve neighborhood stability by:

- (1) providing high quality, long term housing for families of low and moderate income; and
- (2) affording community and residential involvement in the provision of that housing.

(b) The articles of incorporation of a mutual housing association ~~must meet the requirements of the Indiana housing and community development authority under IC 5-20-1-6~~ and must be approved by the authority.

(c) The articles of incorporation of a mutual housing association must include a provision that provides that if the mutual housing association dissolves, is involved in a bankruptcy proceeding, or otherwise disposes of its physical properties, the association may only transfer the assets to another entity that provides high quality long term

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housing for families of low and moderate income."

SECTION 10. IC 6-1.1-12-43 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 43. (a) For purposes of this section:

- (1) "benefit" refers to:
 - (A) a deduction under section 1, 9, 11, 13, 14, 16, 17.4, 26, 29, 31, 33, or 34 of this chapter; or
 - (B) the homestead credit under IC 6-1.1-20.9-2;
- (2) "closing agent" means a person that closes a transaction;
- (3) "customer" means an individual who obtains a loan in a transaction; and
- (4) "transaction" means a single family residential:
 - (A) first lien purchase money mortgage transaction; or
 - (B) refinancing transaction.

(b) Before closing a transaction after December 31, 2004, a closing agent must provide to the customer the form referred to in subsection (c).

(c) Before June 1, 2004, the department of local government finance shall prescribe the form to be provided by closing agents to customers under subsection (b). The department shall make the form available to closing agents, county assessors, county auditors, and county treasurers in hard copy and electronic form. County assessors, county auditors, and county treasurers shall make the form available to the general public. The form must:

- (1) on one (1) side:
 - (A) list each benefit;
 - (B) list the eligibility criteria for each benefit; and
 - (C) indicate that a new application for a deduction under section 1 of this chapter is required when residential real property is refinanced;
- (2) on the other side indicate:
 - (A) each action by; and
 - (B) each type of documentation from;

the customer required to file for each benefit; and
- (3) be printed in one (1) of two (2) or more colors prescribed by the department of local government finance that distinguish the form from other documents typically used in a closing referred to in subsection (b).
- (d) A closing agent:
 - (1) may reproduce the form referred to in subsection (c);
 - (2) in reproducing the form, must use a print color prescribed by the department of local government finance; and

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(3) is not responsible for the content of the form referred to in subsection (c) and shall be held harmless by the department of local government finance from any liability for the content of the form.

(e) This subsection applies to a transaction that is closed after December 31, 2009. In addition to providing the customer the form described in subsection (c) before closing the transaction, a closing agent shall do the following as soon as possible after the closing, and within the time prescribed by the department of insurance under IC 27-7-3-15.5:

(1) Input the information described in IC 27-7-3-15.5(b) into the system maintained by the department of insurance under IC 27-7-3-15.5.

(2) Submit the form described in IC 27-7-3-15.5(c) to the data base described in IC 27-7-3-15.5(c)(2)(B).

~~(e)~~ **(f)** A closing agent to which this section applies shall document ~~its~~ **the closing agent's** compliance with this section with respect to each transaction in the form of verification of compliance signed by the customer.

~~(f)~~ **(g)** A closing agent is subject to a civil penalty of twenty-five dollars (\$25) for each instance in which the closing agent fails to comply with this section with respect to a customer. The penalty:

(1) may be enforced by the state agency that has administrative jurisdiction over the closing agent in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and

(2) shall be paid into the property tax replacement fund.

(h) A closing agent is not liable for any other damages claimed by a customer because of:

(1) the closing agent's mere failure to provide the appropriate document to the customer **under subsection (b); or**

(2) with respect to a transaction that is closed after December 31, 2009, the closing agent's failure to input the information or submit the form described in subsection (e).

~~(g)~~ **(i)** The state agency that has administrative jurisdiction over a closing agent shall:

(1) examine the closing agent to determine compliance with this section; and

(2) impose and collect penalties under subsection ~~(f)~~ **(g)**.

SECTION 11. IC 20-24-8-5, AS AMENDED BY P.L.2-2006, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. The following statutes and rules

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and guidelines adopted under the following statutes apply to a charter school:

- (1) IC 5-11-1-9 (required audits by the state board of accounts).
- (2) IC 20-39-1-1 (unified accounting system).
- (3) IC 20-35 (special education).
- (4) IC 20-26-5-10 and IC 20-28-5-9 (criminal history).
- (5) IC 20-26-5-6 (subject to laws requiring regulation by state agencies).
- (6) IC 20-28-7-14 (void teacher contract when two (2) contracts are signed).
- (7) IC 20-28-10-12 (nondiscrimination for teacher marital status).
- (8) IC 20-28-10-14 (teacher freedom of association).
- (9) IC 20-28-10-17 (school counselor immunity).
- (10) For conversion charter schools only, IC 20-28-6, IC 20-28-7, IC 20-28-8, IC 20-28-9, and IC 20-28-10.
- (11) IC 20-33-2 (compulsory school attendance).
- (12) IC 20-33-3 (limitations on employment of children).
- (13) IC 20-33-8-19, IC 20-33-8-21, and IC 20-33-8-22 (student due process and judicial review).
- (14) IC 20-33-8-16 (firearms and deadly weapons).
- (15) IC 20-34-3 (health and safety measures).
- (16) IC 20-33-9 (reporting of student violations of law).
- (17) IC 20-30-3-2 and IC 20-30-3-4 (patriotic commemorative observances).
- (18) IC 20-31-3, IC 20-32-4, IC 20-32-5, IC 20-32-6, IC 20-32-8, or any other statute, rule, or guideline related to standardized testing (assessment programs, including remediation under the assessment programs).
- (19) IC 20-33-7 (parental access to education records).
- (20) IC 20-31 (accountability for school performance and improvement).
- (21) Beginning with the school year that begins in the calendar year beginning January 1, 2010, IC 20-30-5-19 (instruction concerning consumer transactions and personal financial responsibility).**

SECTION 12. IC 20-30-5-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 19. (a) Beginning with the school year that begins in the calendar year beginning January 1, 2010, each school corporation (including each charter school) and each nonpublic school that voluntarily has become accredited under IC 20-19-2-8 shall include in its curriculum for all students in**

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grades 9 through 12 instruction designed to:

- (1) increase students' awareness of certain consumer transactions, including mortgage transactions; and
- (2) foster personal financial responsibility.

(b) A school corporation (including a charter school) and a nonpublic school that voluntarily has become accredited under IC 20-19-2-8 may meet the requirements of subsection (a) by:

- (1) integrating the instruction described in subsection (a) in its required mathematics curriculum; or
- (2) conducting a separate class or seminar that includes the instruction described in subsection (a).

(c) A person may not receive a high school diploma from a school subject to this section unless the person has received the instruction required by this section.

(d) The department, in collaboration with the department of financial institutions established by IC 28-11-1-1, shall develop guidelines and the state board shall adopt rules under IC 4-22-2 to assist teachers assigned to provide the instruction required by this section."

Page 1, strike lines 8 through 11.

Page 1, line 12, strike "(c)" and insert "(b)".

Page 1, line 15, strike "(d)" and insert "(c)".

Page 1, line 17, strike "(e)" and insert "(d)".

Page 2, line 15, strike "or".

Page 2, line 17, delete "product." and insert "product; or

(5) a creditor that is licensed under IC 24-4.4-2-402."

Page 2, line 18, strike "(f)" and insert "(e)".

Page 2, line 20, strike "(g)" and insert "(f)".

Page 2, line 23, strike "(h)" and insert "(g)".

Page 2, line 26, strike "(e)." and insert "(d)".

Page 2, line 27, strike "(i)" and insert "(h)".

Page 2, line 31, strike "(j)" and insert "(i)".

Page 2, line 35, strike "(k)" and insert "(j)".

Page 2, line 41, strike "(l)" and insert "(k)".

Page 3, line 7, delete "(m)" and insert "(l)".

Page 3, line 29, delete "(n)" and insert "(m)".

Page 3, line 37, delete "(o)" and insert "(n)".

Page 4, line 30, delete "However, if the commissioner seeks evidence of".

Page 4, delete lines 31 through 40.

Page 5, line 1, delete "may" and insert "**shall**".

Page 5, line 26, strike "(1)" and insert "(A)".

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Page 5, line 27, strike "(2)" and insert **"(B)"**.
 Page 5, line 30, strike "(3)" and insert **"(C)"**.
 Page 5, line 33, strike "(4)" and insert **"(D)"**.
 Page 6, line 41, strike "fifty" and insert **"one hundred"**.
 Page 6, line 41, strike "(\$50,000)," and insert **"(\$100,000),"**.
 Page 7, line 28, strike "and".
 Page 7, between lines 28 and 29, begin a new line block indented and insert:
 "(2) individual described in subsection (a)(4); and".
 Page 7, line 29, strike "(2)" and insert **"(3)"**.
 Page 7, line 35, delete "owner" and insert **"owner, the individual described in subsection (a)(4),"**.
 Page 7, line 38, after "owner" insert **", individual described in subsection (a)(4),"**.
 Page 8, line 3, strike "and".
 Page 8, between lines 3 and 4, begin a new line block indented and insert:
 "(2) individual described in subsection (a)(4); and".
 Page 8, line 4, strike "(2)" and insert **"(3)"**.
 Page 8, line 12, after "owner" insert **", the individual described in subsection (a)(4),"**.
 Page 17, strike lines 3 through 6.
 Page 17, line 7, strike "(4)" and insert **"(3)"**.
 Page 17, line 9, strike "(5)" and insert **"(4)"**.
 Page 17, line 15, strike "(6)" and insert **"(5)"**.
 Page 17, line 19, strike "(7)" and insert **"(6)"**.
 Page 17, strike lines 20 through 33.
 Page 17, line 34, strike "Indiana during".
 Page 17, line 34, delete "the".
 Page 17, line 34, strike "calendar year".
 Page 17, line 34, delete "immediately preceding".
 Page 17, delete lines 35 through 36.
 Page 17, strike lines 37 through 38.
 Page 18, strike lines 13 through 20.
 Page 18, line 21, strike "(3) be accompanied by a fee of four hundred dollars (\$400),".
 Page 18, line 21, delete "plus".
 Page 18, delete lines 22 through 23.
 Page 18, strike lines 24 through 35.
 Page 18, line 37, delete "(a) As used in this".
 Page 18, delete lines 38 through 42.
 Page 19, delete line 1.

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Page 19, line 2, delete "(b)" and insert "(a)".

Page 19, line 26, delete "that personal information is" and insert **"the personal information is:**

(A) included as part of:

(i) an application form; or

(ii) a document that is used in connection with an application process or an enrollment process;

(B) used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit; or

(C) used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Recommend a loan to, or procure a loan on behalf of, a prospective borrower without first conducting a reasonable inquiry concerning the prospective borrower's ability to repay the loan. For purposes of this subdivision, a person conducts a reasonable inquiry concerning a borrower's ability to repay a loan if the person:

(A) obtains a consumer report (as defined in IC 24-5-24-2) or other information maintained by a consumer reporting agency (as defined in IC 24-5-24-3) with respect to the prospective borrower; and

(B) obtains information about the prospective borrower through:

(i) a current or past employer of the prospective borrower;

(ii) public records; or

(ii) any other legal or commercially reasonable means."

Page 19, delete lines 27 through 42.

Page 20, delete lines 1 through 7.

Page 20, line 8, delete "(c)" and insert "(b)".

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Page 20, line 8, delete "(b)" and insert "(a)".

Page 21, after line 23, begin a new paragraph and insert:

"SECTION 23. IC 24-4.4 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]:

ARTICLE 4.4. FIRST LIEN MORTGAGE LENDING

Chapter 1. General Provisions and Definitions

Sec. 101. This article shall be known and may be cited as the First Lien Mortgage Lending Act.

Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

- (a)** to permit and encourage the development of fair and economically sound first lien mortgage lending practices; and
- (b)** to conform the regulation of first lien mortgage lending practices to applicable state and federal laws, rules, and regulations.

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted under this article.

(4) A reference to a federal law in this article is a reference to the law in effect December 31, 2008.

Sec. 103. This article:

- (1)** is a general act intended as a unified coverage of its subject matter; and
- (2)** any part of this article may not be considered to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Sec. 104. The provisions of this article are severable, so that if:

- (1)** any provisions of this article; or
- (2)** the application of this article to any person or circumstances;

is held invalid, the invalidity does not affect other provisions or applications of this article that can be given effect without the invalid provision or application.

Sec. 201. (1) Except as provided in subsection (2), this article applies to a first lien mortgage transaction:

- (a)** that is secured by an interest in land in Indiana; and
- (b)** the closing for which takes place after December 31, 2008.

(2) This article does not apply to a first lien mortgage transaction if:

- (a)** the debtor is not a resident of Indiana at the time the

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transaction is entered into; and

(b) the laws of the debtor's state of residence requires that the transaction be made under the laws of the state of the debtor's residence.

Sec. 202. This article does not apply to the following:

- (1) Extensions of credit to government or governmental agencies or instrumentalities.
- (2) A first lien mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose
- (3) An extension of credit primarily for a business, a commercial, or an agricultural purpose.
- (4) A first lien mortgage transaction made:
 - (a) in compliance with the requirements of; and
 - (b) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from; the Indiana housing and community development authority established by IC 5-20-1-3.
- (5) A supervised financial organization.
- (6) An operating subsidiary that is majority owned, directly or indirectly, by a supervised financial organization to the extent the operating subsidiary is regulated by the chartering authority of the supervised financial organization.
- (7) A credit union service organization that is majority owned, directly or indirectly, by one (1) or more credit unions.
- (8) Agencies, instrumentalities, and government owned corporations of the United States, including United States government sponsored enterprises.

Sec. 203. Any civil court in Indiana may exercise jurisdiction over any creditor with respect to any conduct in Indiana governed by this article or with respect to any claim arising from a transaction subject to this article. In addition to any other method provided by rule or by statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in any civil court by the service of process.

Sec. 301. In addition to definitions appearing in subsequent chapters of this article, the following definitions apply throughout this article:

- (1) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
- (2) "Creditor" means a person:

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- (a) that regularly engages in the extension of first lien mortgage transactions that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and
- (b) to which the obligation is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

The term does not include a person described in subsection (13)(a) in a tablefunded transaction.

(3) "Department" refers to the members of the department of financial institutions.

(4) "Director" refers to the director of the department of financial institutions.

(5) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

- (a) condominium unit;
- (b) cooperative unit;
- (c) mobile home; or
- (d) trailer;

that is used as a residence.

(6) "First lien mortgage transaction" means a loan in which a first mortgage, or a land contract which constitutes a first lien, is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(7) "Loan" includes:

- (a) the creation of debt by:
 - (i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or
 - (ii) the extension of credit by a person who regularly engages as a seller in credit transactions primarily secured by an interest in land;
- (b) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and
- (c) the forbearance of debt arising from a loan.

(8) "Payable in installments", with respect to a debt or an obligation, means that payment is required or permitted by written agreement to be made in more than four (4)

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installments not including a down payment.

(9) "Person" includes an individual or an organization.

(10) A person is "regularly engaged" as a creditor in first lien mortgage transactions in Indiana if:

(a) the person acted as a creditor in first lien mortgage transactions in Indiana more than five (5) times in the preceding calendar year; or

(b) the person did not meet the numerical standards set forth in subdivision (a) in the preceding calendar year, but has or will meet the numerical standards set forth in subdivision (a) in the current calendar year.

(11) "Revolving first lien mortgage transaction" means an arrangement between a creditor and a debtor in which:

(a) the creditor permits the debtor to obtain advances from time to time;

(b) the unpaid balances of principal, credit service charges or loan finance charges, and other appropriate charges are debited to an account; and

(c) the debtor has the privilege of paying the balances in installments.

(12) "Supervised financial organization" means a person that is:

(a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States which authorizes the person to make loans and to receive deposits, including deposits into a savings, share, certificate, or deposit account; and

(b) subject to supervision by an official or agency of a state or of the United States.

(13) "Tablefunded" means a transaction in which:

(a) a person closes a first lien mortgage transaction in the person's own name as a mortgagee with funds provided by one (1) or more other persons; and

(b) the transaction is assigned simultaneously to the mortgage creditor providing the funding not later than one (1) business day after the funding of the transaction.

Chapter 2. Miscellaneous

Sec. 101. This chapter shall be known and may be cited as the First Lien Mortgage Lending Act - Miscellaneous.

Sec. 201. (1) A creditor or mortgage servicer shall provide an accurate payoff amount for a first lien mortgage transaction to the debtor not later than ten (10) calendar days after the creditor or

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mortgage servicer receives the debtor's written request for the accurate payoff amount. A creditor or mortgage servicer who fails to provide an accurate payoff amount is liable for:

- (a) one hundred dollars (\$100) if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and
- (b) the greater of:
 - (i) one hundred dollars (\$100); or
 - (ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate payoff amount is provided; if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer fails to comply with subdivision (a).

(2) This subsection applies to a first lien mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least ten (10) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than twenty (20) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a first lien mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the first lien mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable:

- (a) under the terms set forth in subsection (1), as if the creditor or mortgage servicer had failed to provide a first lien mortgage transaction payoff amount; and

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(b) in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

Sec. 301. (1) A violation of a state or federal law, regulation, or rule applicable to first lien mortgage transactions is a violation of this article.

(2) The department may enforce penalty provisions set forth in 15 U.S.C. 1640 for violations of disclosure requirements applicable to first lien mortgage transactions.

Sec. 401. Unless a person subject to this article has first obtained a license from the department, the person shall not regularly engage in Indiana as a creditor in first lien mortgage transactions. However, this article does not require an employee of a person that is licensed under this article to obtain a license to make a first lien mortgage loan.

Sec. 402. (1) The department shall receive and act on all applications for licenses to engage in first lien mortgage transactions. Applications must be made as prescribed by the director.

(2) A license may not be issued unless the department finds that the financial responsibility, character, and fitness of:

- (a) the applicant and any significant affiliate of the applicant;
- (b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and
- (c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(3) The director is entitled to request evidence of compliance with this section at:

- (a) the time of application;
- (b) the time of renewal of a license; or
- (c) any other time considered necessary by the director.

(4) Evidence of compliance with this section may include:

- (a) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);
- (b) credit histories; and
- (c) other background checks considered necessary by the

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director.

If the director requests a national criminal history background check under subdivision (a) for an individual described in subsection (2), the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (3). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

(5) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(6) Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license in the manner provided in IC 4-21.5.

(7) The applicant shall pay the following fees at the time designated by the department:

(a) An initial license fee as established by the department under IC 28-11-3-5.

(b) An annual renewal fee as established by the department under IC 28-11-3-5.

(c) Examination fees as established by the department under IC 28-11-3-5.

(8) A fee as established by the department under IC 28-11-3-5 may be charged for each day the annual renewal fee under subsection (7)(b) is delinquent.

(9) A license issued under this section is not assignable or transferable.

(10) Subject to subsection (11), the director may designate an automated central licensing system and repository, operated by a third party, to serve as the sole entity responsible for:

(a) processing applications and renewals for licenses under this section; and

(b) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under this article.

(11) The director's authority to designate an automated central

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licensing system and repository under subsection (10) is subject to the following:

(a) The director or the director's designee may not require any person exempt from licensure under this article, or any employee or agent of an exempt person, to:

(i) submit information to; or

(ii) participate in;

the automated central licensing system and repository.

(b) Information stored in the automated central licensing system and repository is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:

(i) obtain information from the automated central licensing system and repository, unless the person is authorized to do so by statute;

(ii) initiate any civil action based on information obtained from the automated central licensing system if the information is not otherwise available to the person under any other state law; or

(iii) initiate any civil action based on information obtained from the automated central licensing system if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(c) Documents, materials, and other forms of information in the control or possession of the automated central licensing system and repository that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the automated central licensing system and repository;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director or the director's designee may use the documents, materials, or other information available to the director or the director's designee in furtherance of any action brought in connection with the director's duties under this article.

(d) Disclosure of documents, materials, and information:

(i) to the director or the director's designee; or

(ii) by the director or the director's designee;

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under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(e) Information provided to the automated central licensing system and repository is subject to IC 4-1-11.

(f) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or proceeding; or

(iii) use information to initiate a civil action or proceeding; if the information may be obtained from the director or the director's designee under any law.

(g) The director may require a licensee required to submit information to the automated central licensing system and repository to pay a processing fee considered reasonable by the director.

Sec. 403. (1) A license issued by the department authorizing a person to engage in first lien mortgage transactions under this article may be revoked by the department if the person fails to:

(a) file any renewal form required by the department; or

(b) pay any license renewal fee described under section 402 of this chapter;

not later than sixty (60) days after the due date.

(2) A person whose license is revoked under this section may do either of the following:

(a) Pay all delinquent fees and apply for a new license.

(b) Appeal the revocation to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation, the license remains in force.

Sec. 404. (1) The department may issue to a person licensed to engage in first lien mortgage transactions an order to show cause why the person's license should not be revoked or suspended for a period determined by the department. The order must state the place and time for a meeting with the department that is not less than ten (10) days from the date of the order. After the meeting, the department shall revoke or suspend the license if the department finds that:

(a) the licensee has repeatedly and willfully violated:

(i) this article or any rule or order lawfully adopted or issued under this article; or

(ii) any other state or federal law, regulation, or rule

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applicable to first lien mortgage transactions; or
 (b) facts or conditions exist which would clearly have justified the department in refusing to grant a license had the facts or conditions been known to exist at the time the application for the license was made.

(2) Except as provided in section 403 of this chapter, a revocation or suspension of a license is not authorized under this article unless before instituting proceedings to suspend or revoke the license, the department gives notice to the licensee of the conduct or facts that warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(3) If the department finds that probable cause for revocation of a license exists and that enforcement of this article requires immediate suspension of the license pending investigation, the department may, after a hearing with the licensee upon five (5) days written notice to the licensee, enter an order suspending the license for not more than thirty (30) days.

(4) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of the revocation or suspension. Not later than five (5) days after the entry of the order the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license to engage in first lien mortgage transactions may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this paragraph does not affect the person's liability for acts previously committed and coming within the scope of this article.

(6) A revocation, suspension, or relinquishment of a license does not impair or affect the obligation of any preexisting lawful contract between:

- (a) the person whose license has been revoked, suspended, or relinquished; and
- (b) any debtor.

(7) The department may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if the director determines that, at the time the determination is made, there is no fact or condition that exists that clearly would justify the department in refusing to grant a license.

(8) If the director:

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(a) has just cause to believe an emergency exists from which it is necessary to protect the interests of the public; or
 (b) determines that a license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;
 the director may proceed with the revocation of the license under IC 4-21.5-3-6.

Sec. 405. (1) Every licensee shall maintain records in a manner that will enable the department to determine whether the licensee is complying with this Article. The record keeping system of a licensee is sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever the records are located. Records concerning any first lien mortgage transaction shall be retained for two (2) years after the making of the final entry relating to the transaction, but in the case of a revolving first lien mortgage transaction, the two (2) years required under this subsection is measured from the date of each entry relating to the transaction.

(2) A licensee shall file with the department financial statements relating to all first lien mortgage transactions originated by the licensee. The licensee shall file the financial statements as required by the department, but not more frequently than annually, in the form prescribed by the department.

(3) A licensee shall file notification with the department if the licensee:

- (a) has a change in name, address, or any of its principals;
- (b) opens a new branch, closes an existing branch, or relocates an existing branch;
- (c) files for bankruptcy or reorganization; or
- (d) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensee's activities;

not later than thirty (30) days after the date of the event described in this subsection.

(4) A licensee shall file notification with the department if a key officer or director of the licensee:

- (a) is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; or
- (b) has been convicted of or pleaded guilty or nolo contendere

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to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; not later than thirty (30) days after the date of the event described in this subsection.

Sec. 501. A creditor in a first lien mortgage transaction shall comply with IC 6-1.1-12-43, to the extent applicable.

Sec. 502. (1) A violation by a creditor in a first lien mortgage transaction of Section 125 of the Federal Consumer Credit Protection Act (15 U.S.C. 1635) (concerning a debtor's right to rescind a transaction) constitutes a violation of this article. A creditor may not accrue interest during the period when a first lien mortgage transaction may be rescinded under Section 125 of the Federal Consumer Protection Act (15 U.S.C. 1635).

(2) A creditor must make available for disbursement the proceeds of a transaction subject to subsection (1) on the later of:

- (a)** the date the creditor is reasonably satisfied that the debtor has not rescinded the transaction; or
- (b)** the first business day after the expiration of the rescission period under subsection (1).

Chapter 3. Administration

Sec. 101. This chapter shall be known and may be cited as the First Lien Mortgage Lending Act - Administration.

Sec. 102. This chapter applies to a person that regularly engages as a creditor in first lien mortgage transactions in Indiana.

Sec. 103. (1) In addition to other powers granted by this article, the department within the limitations provided by law may:

- (a)** receive and act on complaints, take action designed to obtain voluntary compliance with this article, or commence proceedings on the department's own initiative;
- (b)** counsel persons and groups on their rights and duties under this article;
- (c)** establish programs for the education of consumers with respect to credit practices and problems;
- (d)** make studies appropriate to effectuate the purposes and policies of this article and make the results available to the public;
- (e)** adopt, amend, and repeal rules, orders, policies, and forms to carry out the provisions of this article;
- (f)** maintain more than one (1) office within Indiana; and
- (g)** appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this

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section to appear for and represent the department in court.

(2) Liability may not be imposed under this article for an act done or omitted in conformity with a rule, written notice, written opinion, written interpretation, or written directive of the department notwithstanding the fact that after the act is done or omitted the rule, written notice, written opinion, written interpretation, or written directive may be:

(a) amended or repealed; or

(b) determined by judicial or other authority to be invalid; for any reason.

Sec. 104. (1) In administering this article and in order to determine whether the provisions of this article are being complied with by persons engaging in acts subject to this article, the department may examine the records of persons and may make investigations of persons as may be necessary to determine compliance. Records subject to examination under this section include the following:

(a) Training, operating, and policy manuals.

(b) Minutes of:

(i) management meetings; and

(ii) other meetings.

(c) Financial records, credit files, and data bases.

(d) Other records that the department determines are necessary to perform its investigation or examination.

The department may also administer oaths or affirmations, subpoena witnesses, compel the attendance of witnesses, adduce evidence, and require the production of any matter which is relevant to an investigation. The department shall determine the sufficiency of the records maintained and whether the person has made the required information reasonably available. The records concerning any transaction subject to this article shall be retained for two (2) years after the making of the final entry relating to the first lien mortgage transaction, but in the case of a revolving first lien mortgage transaction the two (2) year period is measured from the date of each entry.

(2) The department's examination and investigatory authority under this article includes the following:

(a) The authority to require a creditor to refund overcharges resulting from the creditor's noncompliance with the terms of a first lien mortgage transaction.

(b) The authority to require a creditor to comply with the penalty provisions set forth in IC 24-4.4-2-201.

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(c) The authority to investigate complaints filed with the department by debtors.

(3) The department shall be given free access to the records wherever the records are located. If the person's records are located outside Indiana, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or the department's representative to examine the records where they are maintained. The department may designate comparable officials of the state in which the records are located to inspect the records on behalf of the department.

(4) Upon a person's failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice by the department to all affected persons, the department may apply to any civil court with jurisdiction for an order compelling compliance.

(5) The department shall not make public:

- (a) the name or identity of a person whose acts or conduct the department investigates under this section; or
- (b) the facts discovered in the investigation.

However, this subsection does not apply to civil actions or enforcement proceedings under this article.

Sec. 105. Except as otherwise provided, IC 4-21.5-3 governs any action taken by the department under this chapter or IC 24-4.4-2-401 through IC 24-4.4-2-405. IC 4-22-2 applies to the adoption of rules by the department under this article. However, if the department determines that an emergency exists, the department may adopt any rules authorized by this article under IC 4-22-2-37.1.

Sec. 106. (1) After notice and hearing, the department may order a creditor or a person acting on the creditor's behalf to cease and desist from engaging in violations of this article. In any civil court with jurisdiction:

- (a) a respondent aggrieved by an order of the department may obtain judicial review of the order; and
- (b) the department may obtain an order of the court for the enforcement of the department's order.

A proceeding for review or enforcement under this subsection shall be initiated by the filing of a petition in the court. Copies of the petition shall be served upon all parties of record.

(2) Not later than thirty (30) days after service of a petition for review upon the department under subsection (1), or within such

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further time as the court may allow, the department shall transmit to the court the original or a certified copy of the entire record upon which the order that is the subject of the review is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After conducting a hearing on the matter, the court may:

- (a) reverse or modify the order if the findings of fact of the department are clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record;
- (b) grant any temporary relief or restraining order the court considers just; and
- (c) enter an order:
 - (i) enforcing;
 - (ii) modifying;
 - (iii) enforcing as modified; or
 - (iv) setting aside;
 in whole or in part, the order of the department; or
- (d) enter an order remanding the case to the department for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the department in the interest of justice for the purpose of:

- (a) adducing additional specified and material evidence; and
- (b) seeking a finding upon such evidence;

upon good cause shown for the failure to previously adduce this evidence before the department.

(4) The jurisdiction of the court is exclusive and the court's final judgment or decree is subject to review on appeal in the same manner and form and with the same effect as in appeals from a final judgment or decree. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated not later than thirty (30) days after a copy of the order of the department is received. If a proceeding is not initiated within the time set forth in this subsection, the department may obtain a decree of a civil court with jurisdiction for enforcement of the department's order upon a showing that:

- (a) the order was issued in compliance with this section;
- (b) a proceeding for review was not initiated within the thirty

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(30) day period prescribed by this subsection; and

(c) the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by a respondent, the department may not issue an order under this section but may bring a civil action for an injunction under section 111 of this chapter.

Sec. 107. If it is claimed that a person has engaged in conduct subject to an order by:

(a) the department under section 106(1) of this chapter; or

(b) a court under sections 108 through 110 of this chapter;

the department may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with the terms of the assurance, the assurance is evidence that before the assurance was issued the person engaged in the conduct described in the assurance.

Sec. 108. The department may bring a civil action to restrain a person from violating this article and for other appropriate relief.

Sec. 109. (1) As used in this section, "deceptive act" means an act or a practice in which a person knowingly or intentionally:

(a) makes a material misrepresentation concerning; or

(b) conceals material information regarding the terms or conditions of;

a first lien mortgage transaction.

(2) For purposes of this section, "knowingly" means having actual knowledge at the time of the transaction.

(3) The department may bring a civil action to enjoin a deceptive act performed in connection with a first lien mortgage transaction.

Sec. 110. With respect to an action brought under:

(a) section 108 of this chapter to enjoin violations of this article; or

(b) section 109 of this chapter to enjoin deceptive acts;

the department may apply to the court for appropriate temporary relief against a respondent, pending final determination of the proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in the conduct sought to be restrained, the court may grant any temporary relief or restraining order the court considers appropriate.

Sec. 111. (1) The department may bring a civil action against a creditor or a person acting on the creditor's behalf to recover a

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civil penalty for willfully violating this article. If the court finds that the defendant has engaged in a course of repeated and willful violations of this article, the court may assess a civil penalty of not more than five thousand dollars (\$5,000). A civil penalty may not be imposed under this subsection:

- (a) for violations of this article occurring more than two (2) years before the action is brought; or
- (b) for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

(2) If the department determines, after notice and opportunity for hearing, that a person has violated this article, the department may, in addition to or instead of all other remedies available under this section, impose upon the person a civil penalty not greater than ten thousand dollars (\$10,000) per violation.

Sec. 112. In an action brought by the department under this article, the defendant does not have a right to trial by a jury.

Sec. 113. The grant of powers to the department under this article does not affect remedies available to debtors under this article or under other principles of law or equity.

Sec. 114. The department may bring an action or a proceeding in a court in a county:

- (1) in which an act on which the action or proceeding is based occurred;
- (2) in which the respondent resides or transacts business; or
- (3) in which the action or proceeding is otherwise authorized by rule or venue laws.

Sec. 115. As used in this article, "civil court" means any court in Indiana having jurisdiction of civil cases.

SECTION 24. IC 24-4.5-1-301, AS AMENDED BY P.L.57-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 301. General Definitions – In addition to definitions appearing in subsequent chapters in this article:

(1) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(2) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products; "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms

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and any processed or manufactured products thereof.

(3) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(4) "Closing costs" with respect to a debt secured by an interest in land includes:

- (a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;
- (b) fees for preparation of a deed, settlement statement, or other documents;
- (c) escrows for future payments of taxes and insurance;
- (d) fees for notarizing deeds and other documents;
- (e) appraisal fees; and
- (f) credit reports.

(5) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

(6) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(7) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) "Creditor" means a person:

- (a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable **by written agreement in more than four (4) installments (not including a down payment)**; and
- (b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

(9) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(10) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

- (a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;
- (b) by the lender's payment or agreement to pay the debtor's

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obligations; or

(c) by the lender's purchase from the obligee of the debtor's obligations.

(11) "Official fees" means:

(a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(12) "Organization" means a corporation, a government or governmental subdivision, or an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, or an association.

(13) "Payable in installments" means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(14) "Person" includes a natural person or an individual and an organization.

(15) "Person related to" with respect to an individual means:

(a) the spouse of the individual;

(b) a brother, brother-in-law, sister, sister-in-law of the individual;

(c) an ancestor or lineal descendants of the individual or the individual's spouse; and

(d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

"Person related to" with respect to an organization means:

(a) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) the spouse of a person related to the organization; and

(d) a relative by blood or marriage of a person related to the organization who shares the same home with the person.

(16) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

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(17) "Mortgage transaction" means a transaction in which a first mortgage or a land contract which constitutes a first lien is created or retained against land.

(18) "Regularly engaged" means a person who extends consumer credit more than:

(a) twenty-five (25) times; or

(b) five (5) times for transactions secured by a dwelling;

in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

(19) "Seller credit card" means an arrangement which gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(20) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

(a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account; and

(b) subject to supervision by an official or agency of a state or of the United States.

(21) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(22) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

(a) controls;

(b) is controlled by; or

(c) is under common control with;

the person subject to this article.

SECTION 25. IC 24-4.5-2-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definition; "Seller" - Except as otherwise provided, "seller" **means a person regularly engaged as a creditor in making consumer credit sales.** The term includes an assignee of the seller's right to payment but use

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of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

SECTION 26. IC 24-4.5-2-201, AS AMENDED BY P.L.57-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 201. Credit Service Charge for Consumer Credit Sales other than Revolving Charge Accounts — (1) With respect to a consumer credit sale, other than a sale pursuant to a revolving charge account, a seller may contract for and receive a credit service charge not exceeding that permitted by this section.

(2) The credit service charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

- (a) the total of:
 - (i) thirty-six percent (36%) per year on that part of the unpaid balances of the amount financed which is three hundred dollars (\$300) or less;
 - (ii) twenty-one percent (21%) per year on that part of the unpaid balances of the amount financed which is more than three hundred dollars (\$300) but does not exceed one thousand dollars (\$1,000); and
 - (iii) fifteen percent (15%) per year on that part of the unpaid balances of the amount financed which is more than one thousand dollars (\$1,000); or
- (b) twenty-one percent (21%) per year on the unpaid balances of the amount financed.

(3) This section does not limit or restrict the manner of contracting for the credit service charge, whether by way of add-on, discount, or otherwise, so long as the rate of the credit service charge does not exceed that permitted by this section. If the sale is precomputed:

- (a) the credit service charge may be calculated on the assumption that all scheduled payments will be made when due; and
- (b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-2-210).

(4) For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed more than thirty (30) days after that date, with the date of commencement of delivery or performance except as set forth below:

- (a) Delays attributable to the customer. Where the customer requests delivery after the thirty (30) day period or where delivery occurs after the thirty (30) day period for a reason attributable to the customer (including but not limited to failure to close on a

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residence or failure to obtain lease approval), the term of the sale agreement shall commence with the date credit is granted.

(b) Partial Deliveries. Where any portion of the order has been delivered within the thirty (30) day period, the term of the sale agreement shall commence with the date credit is granted.

Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the seller may reasonably establish, the seller may make the same credit service charge on all amounts financed within a specified range. A credit service charge so made does not violate subsection (2) if:

- (a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (2); and
- (b) when applied to the lowest amount within each range, it does not produce a rate of credit service charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) Notwithstanding subsection (2), the seller may contract for and receive a minimum credit service charge of not more than thirty dollars (\$30). The minimum credit service charge allowed under this subsection may be imposed only if:

- (a) the ~~borrower~~ **debtor** prepays in full a consumer credit sale, refinancing, or consolidation, regardless of whether the sale, refinancing, or consolidation is precomputed;
- (b) the sale, refinancing, or consolidation prepaid by the ~~borrower~~ **debtor** is subject to a credit service charge that:
 - (i) is contracted for by the parties; and
 - (ii) does not exceed the rate prescribed in subsection (2); and
- (c) the credit service charge earned at the time of prepayment is less than the minimum credit service charge contracted for under this subsection.

(7) The amounts of three hundred dollars (\$300) and one thousand dollars (\$1,000) in subsection (2) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106).

(8) The amount of thirty dollars (\$30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the

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Reference Base Index to be used under this subsection is the Index for October 1992.

SECTION 27. IC 24-4.5-2-209 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 209. Right to Prepay - (1) Subject to the provisions on rebate upon prepayment (IC 24-4.5-2-210), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

(2) At the time of prepayment of a credit sale not subject to the provisions of rebate upon prepayment (IC 24-4.5-2-210), the total credit service charge, including the prepaid credit service charge, may not exceed the maximum charge allowed under this chapter for the period the credit sale was in effect.

(3) The creditor or mortgage servicer shall provide an accurate payoff of the consumer credit sale to the debtor within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer credit sale payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer credit sale payoff amount is liable for:

(A) one hundred dollars (\$100) if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the credit service charge that accrues on the sale from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer credit sale payoff amount is provided;

if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with clause (A).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

(4) As used in this subsection, "mortgage transaction" means a consumer credit sale in which a mortgage, deed of trust, or a land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This

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subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least ten (10) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than twenty (20) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable:

- (a) under the terms set forth in subsection (3), as if the creditor or mortgage servicer had failed to provide a consumer credit sale payoff amount; and
- (b) in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 28. IC 24-4.5-3-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definitions: "Lender"; "Precomputed"; "Principal" — (1) Except as otherwise provided, "lender" **means a person regularly engaged in making consumer loans. The term** includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(2) A loan, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(3) "Principal" of a loan means the total of:

- (a) the net amount paid to, receivable by, or paid or payable for the account of the debtor;
- (b) the amount of any discount excluded from the loan finance charge (subsection (2) of 24-4.5-3-109); and
- (c) to the extent that payment is deferred:

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- (i) amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and
- (ii) additional charges permitted by this Chapter (24-4.5-3-202).

SECTION 29. IC 24-4.5-3-201, AS AMENDED BY P.L.57-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 201. Loan Finance Charge for Consumer Loans other than Supervised Loans—(1) Except as provided in subsections (6) and (8), with respect to a consumer loan other than a supervised loan (IC 24-4.5-3-501), a lender may contract for a loan finance charge, calculated according to the actuarial method, not exceeding twenty-one percent (21%) per year on the unpaid balances of the principal.

(2) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

- (a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and
- (b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(3) For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. For purposes of computing average daily balances, the creditor may elect to treat all months as consisting of thirty (30) days.

(4) With respect to a consumer loan made pursuant to a revolving loan account:

- (a) the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is one and three-fourths percent (1 3/4%) of an amount no greater than:
 - (i) the average daily balance of the debt;
 - (ii) the unpaid balance of the debt on the same day of the billing cycle; or

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(iii) subject to subsection (5), the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the same day of the billing cycle, is included; for the purposes of this subparagraph and subparagraph (ii), a variation of not more than four (4) days from month to month is "the same day of the billing cycle";

(b) if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to one-twelfth (1/12) the maximum annual percentage rate as the number of days in the billing cycle bears to thirty (30); and

(c) notwithstanding subsection (1), if there is an unpaid balance on the date as of which the loan finance charge is applied, the lender may contract for and receive a charge not exceeding fifty cents (\$0.50) if the billing cycle is monthly or longer, or the pro rata part of fifty cents (\$0.50) which bears the same relation to fifty cents (\$0.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges (paragraph (c) of subsection (1) of IC 24-4.5-3-202).

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all amounts financed within a specified range. A loan finance charge does not violate subsection (1) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (1); and

(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) With respect to a consumer loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars (\$30). The minimum loan finance charge allowed under this subsection may be imposed only if:

(a) the ~~borrower~~ **debtor** prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;

(b) the loan, refinancing, or consolidation prepaid by the ~~borrower~~

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debtor is subject to a loan finance charge that:

- (i) is contracted for by the parties; and
- (ii) does not exceed the rate prescribed in subsection (1); and
- (c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

(7) The amount of thirty dollars (\$30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992.

(8) In addition to the loan finance charge provided for in this section, a lender may contract for the following:

- (a) With respect to a consumer loan that is not made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the loan amount.
- (b) With respect to a consumer loan that is made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the line of credit that was contracted for.

(9) The charges provided for in subsection (8):

- (a) are not subject to refund or rebate;
- (b) are not permitted if a lender makes a settlement charge under IC 24-4.5-3-202(d)(ii); and
- (c) are limited to two percent (2%) of the part of the loan that does not exceed two thousand dollars (\$2,000), if the loan is not primarily secured by an interest in land.

Notwithstanding subdivision (a), if a lender retains any part of a loan origination fee charged on a loan that is paid in full by a new loan from the same lender within three (3) months after the date of the prior loan, the lender may charge a loan origination fee only on that part of the new loan not used to pay the amount due on the prior loan, or in the case of a revolving loan, the lender may charge a loan origination fee only on the difference between the amount of the existing credit line and the increased credit line. This subsection does not prohibit a lender from contracting for and receiving a fee for preparing deeds, mortgages, reconveyance, and similar documents under IC 24-4.5-3-202(d)(ii), in addition to the charges provided for in subsection (8).

SECTION 30. IC 24-4.5-3-209 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 209. Right to Prepay - (1) Subject to the provisions on rebate upon prepayment (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of a

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consumer loan, refinancing, or consolidation at any time without penalty. With respect to a consumer loan that is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of any amount prepaid within sixty (60) days of the date of the prepayment in full, after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

- (a) if the loan is refinanced or consolidated with the same creditor;
- (b) for prepayment by proceeds of any insurance or acceleration after default; or
- (c) after three (3) years from the contract date.

(2) At the time of prepayment of a consumer loan not subject to the provisions of rebate upon prepayment (IC 24-4.5-3-210), the total finance charge, including the prepaid finance charge but excluding the loan origination fee allowed under IC 24-4.5-3-201, may not exceed the maximum charge allowed under this chapter for the period the loan was in effect. For the purposes of determining compliance with this subsection, the total finance charge does not include the following:

- (a) The loan origination fee allowed under IC 24-4.5-3-201.
- (b) The ~~borrower~~ **debtor** paid mortgage broker fee, if any, paid to a person who does not control, is not controlled by, or is not under common control with, the creditor holding the loan at the time a consumer loan is prepaid.

(3) The creditor or mortgage servicer shall provide an accurate payoff of the consumer loan to the debtor within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer loan payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer loan payoff amount is liable for:

- (a) one hundred dollars (\$100) if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and
- (b) the greater of:
 - (i) one hundred dollars (\$100); or
 - (ii) the loan finance charge that accrues on the loan from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer loan payoff amount is provided;

if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after

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the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with subdivision (a).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

(4) As used in this subsection, "mortgage transaction" means a consumer credit loan in which a mortgage, deed of trust, or a land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least ten (10) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than twenty (20) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable:

(a) under the terms set forth in subsection (3), as if the creditor or mortgage servicer had failed to provide a consumer credit loan payoff amount; and

(b) in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 31. IC 24-4.5-3-508, AS AMENDED BY P.L.57-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 508. Loan Finance Charge for Supervised Loans – (1) With respect to a supervised loan, including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.



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(2) The loan finance charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

- (a) the total of:
 - (i) thirty-six percent (36%) per year on that part of the unpaid balances of the principal which is three hundred dollars (\$300) or less;
 - (ii) twenty-one percent (21%) per year on that part of the unpaid balances of the principal which is more than three hundred dollars (\$300) but does not exceed one thousand dollars (\$1,000); and
 - (iii) fifteen percent (15%) per year on that part of the unpaid balances of the principal which is more than one thousand dollars (\$1000); or
- (b) twenty-one percent (21%) per year on the unpaid balances of the principal.

(3) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

- (a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and
- (b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(4) The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth ($1/30$) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all principal amounts within a specified range. A loan finance charge does not violate subsection (2) if:

- (a) when applied to the median amount within each range, it does not exceed the maximum permitted in subsection (2); and
- (b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

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(6) The amounts of three hundred dollars (\$300) and one thousand dollars (\$1,000) in subsection (2) and thirty dollars (\$30) in subsection (7) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). For the adjustment of the amount of thirty dollars (\$30), the Reference Base Index to be used is the Index for October 1992.

(7) With respect to a supervised loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars (\$30). The minimum loan finance charge allowed under this subsection may be imposed only if:

- (a) the **borrower debtor** prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;
- (b) the loan, refinancing, or consolidation prepaid by the **borrower debtor** is subject to a loan finance charge that:
 - (i) is contracted for by the parties; and
 - (ii) does not exceed the rate prescribed in subsection (2); and
- (c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

SECTION 32. IC 24-5-0.5-2, AS AMENDED BY P.L.1-2007, SECTION 165, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) As used in this chapter:

- (1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. However, the term includes the following:
 - (A) A transfer of structured settlement payment rights under IC 34-50-2.
 - (B) An unsolicited advertisement sent to a person by telephone facsimile machine offering a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible.
- (2) "Person" means an individual, corporation, the state of Indiana or its subdivisions or agencies, business trust, estate, trust,

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partnership, association, nonprofit corporation or organization, or cooperative or any other legal entity.

(3) "Supplier" means the following:

(A) A seller, lessor, assignor, or other person who regularly engages in or solicits consumer transactions, including soliciting a consumer transaction by using a telephone facsimile machine to transmit an unsolicited advertisement. The term includes a manufacturer, wholesaler, or retailer, whether or not the person deals directly with the consumer.

(B) A person who contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.

(C) With respect to a deceptive act described in section 3(h) of this chapter, a creditor (as defined in IC 24-9-2-6).

(4) "Subject of a consumer transaction" means the personal property, real property, services, or intangibles offered or furnished in a consumer transaction.

(5) "Cure" as applied to a deceptive act, means either:

(A) to offer in writing to adjust or modify the consumer transaction to which the act relates to conform to the reasonable expectations of the consumer generated by such deceptive act and to perform such offer if accepted by the consumer; or

(B) to offer in writing to rescind such consumer transaction and to perform such offer if accepted by the consumer.

The term includes an offer in writing of one (1) or more items of value, including monetary compensation, that the supplier delivers to a consumer or a representative of the consumer if accepted by the consumer.

(6) "Offer to cure" as applied to a deceptive act is a cure that:

(A) is reasonably calculated to remedy a loss claimed by the consumer; and

(B) includes a minimum additional amount that is the greater of:

(i) ten percent (10%) of the value of the remedy under clause (A), but not more than four thousand dollars (\$4,000); or

(ii) five hundred dollars (\$500);

as compensation for attorney's fees, expenses, and other costs that a consumer may incur in relation to the deceptive act.

(7) "Uncured deceptive act" means a deceptive act:

(A) with respect to which a consumer who has been damaged

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by such act has given notice to the supplier under section 5(a) of this chapter; and

(B) either:

- (i) no offer to cure has been made to such consumer within thirty (30) days after such notice; or
- (ii) the act has not been cured as to such consumer within a reasonable time after the consumer's acceptance of the offer to cure.

(8) "Incurable deceptive act" means a deceptive act done by a supplier as part of a scheme, artifice, or device with intent to defraud or mislead. The term includes a failure of a transferee of structured settlement payment rights to timely provide a true and complete disclosure statement to a payee as provided under IC 34-50-2 in connection with a direct or indirect transfer of structured settlement payment rights.

(9) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration exceeding one hundred dollars (\$100) for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. The term does not include ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme.

(10) "Promoting a pyramid promotional scheme" means:

- (A) inducing or attempting to induce one (1) or more other persons to become participants in a pyramid promotional scheme; or
- (B) assisting another in promoting a pyramid promotional scheme.

(11) "Elderly person" means an individual who is at least sixty-five (65) years of age.

(12) "Telephone facsimile machine" means equipment that has the capacity to transcribe text or images, or both, from:

- (A) paper into an electronic signal and to transmit that signal over a regular telephone line; or
- (B) an electronic signal received over a regular telephone line onto paper.

(13) "Unsolicited advertisement" means material advertising the commercial availability or quality of:

- (A) property;
- (B) goods; or

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(C) services;

that is transmitted to a person without the person's prior express invitation or permission, in writing or otherwise.

(b) As used in section 3(a)(15) of this chapter:

(1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service.

(2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one (1) telephone company.

(3) "Local telephone number" refers to a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800-, 888-, or 900- exchange numbers listed in a local telephone directory.

SECTION 33. IC 24-5-0.5-3, AS AMENDED BY P.L.85-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) The following acts or representations as to the subject matter of a consumer transaction, made orally, in writing, or by electronic communication, by a supplier, are deceptive acts:

(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.

(2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.

(3) That such subject of a consumer transaction is new or unused, if it is not and if the supplier knows or should reasonably know that it is not.

(4) That such subject of a consumer transaction will be supplied to the public in greater quantity than the supplier intends or reasonably expects.

(5) That replacement or repair constituting the subject of a consumer transaction is needed, if it is not and if the supplier knows or should reasonably know that it is not.

(6) That a specific price advantage exists as to such subject of a

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consumer transaction, if it does not and if the supplier knows or should reasonably know that it does not.

(7) That the supplier has a sponsorship, approval, or affiliation in such consumer transaction the supplier does not have, and which the supplier knows or should reasonably know that the supplier does not have.

(8) That such consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.

(9) That the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a sale or lease in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit, rebate, or discount is contingent upon the occurrence of an event subsequent to the time the consumer agrees to the purchase or lease.

(10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know the supplier could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that the supplier will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

(11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

(12) That the replacement or repair constituting the subject of a consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the specified work is completed and:

(A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;

(B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);

(C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars (\$750); and

(D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

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(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:

(A) the customer has been notified that the work has been completed; and

(B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing a fictitious business name or an assumed business name (as described in IC 23-15-1) in a local telephone directory if:

(A) the name misrepresents the supplier's geographic location;

(B) the listing fails to identify the locality and state of the supplier's business;

(C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and

(D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.

(16) The act of listing a fictitious business name or assumed business name (as described in IC 23-15-1) in a directory assistance data base if:

(A) the name misrepresents the supplier's geographic location;

(B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and

(C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.

(17) That the supplier violated IC 24-3-4 concerning cigarettes for import or export.

(18) That a supplier knowingly sells or resells a product to a consumer if the product has been recalled, whether by the order of a court or a regulatory body, or voluntarily by the manufacturer, distributor, or retailer unless the product has been repaired or modified to correct the defect that was the subject of

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the recall.

(19) That the supplier violated 47 U.S.C. 227, including any rules or regulations issued under 47 U.S.C. 227.

(b) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

(c) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(d) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

(e) For purposes of subsection (a)(12), a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

(f) For purposes of subsection (a)(15), a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance data base unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

(g) For purposes of subsection (a)(18), it is an affirmative defense to any action brought under this chapter that the product has been altered by a person other than the defendant to render the product completely incapable of serving its original purpose.

(h) In addition to the acts set forth in subsection (a), a violation of IC 24-9 (concerning home loans) is a deceptive act under this chapter.

SECTION 34. IC 24-5-0.5-4, AS AMENDED BY P.L.85-2006,



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SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) **Except as provided in subsection (l),** a person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act or five hundred dollars (\$500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of:

- (1) three (3) times the actual damages of the consumer suffering the loss; or
- (2) one thousand dollars (\$1,000).

Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in an action under this subsection. **Except for a deceptive act described in section 3(h) of this chapter, and except for purchases of time shares and camping club memberships,** this subsection does not apply to a consumer transaction in real property, including a claim or action involving a construction defect (as defined in IC 32-27-3-1(5)) brought against a construction professional (as defined in IC 32-27-3-1(4)). ~~except for purchases of time shares and camping club memberships.~~ This subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12, or IC 24-5-14. Actual damages awarded to a person under this section have priority over any civil penalty imposed under this chapter.

(b) Any person who is entitled to bring an action under subsection (a) on the person's own behalf against a supplier for damages for a deceptive act may bring a class action against such supplier on behalf of any class of persons of which that person is a member and which has been damaged by such deceptive act, subject to and under the Indiana Rules of Trial Procedure governing class actions, except as herein expressly provided. Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in a class action under this subsection, provided that such fee shall be determined by the amount of time reasonably expended by the attorney and not by the amount of the judgment, although the contingency of the fee may be considered. Any money or other property recovered in a class action under this subsection which cannot, with due diligence, be restored to consumers within one (1) year after the judgment becomes final shall be returned to the party depositing the same. **Except for a deceptive act described in section 3(h) of this chapter, and except for purchases of time shares and camping club memberships,** this subsection does not apply to a consumer transaction in real property. ~~except for purchases of time shares and camping club memberships.~~ Actual damages awarded to a class have priority over any civil penalty

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imposed under this chapter.

(c) The attorney general may bring an action to enjoin a deceptive act, **including a deceptive act described in section 3(h) of this chapter.** However, **with respect to all other consumer transactions involving real property**, the attorney general may seek to enjoin patterns of incurable deceptive acts. ~~with respect to consumer transactions in real property.~~ In addition, the court may:

- (1) issue an injunction;
- (2) order the supplier to make payment of the money unlawfully received from the aggrieved consumers to be held in escrow for distribution to aggrieved consumers;
- (3) order the supplier to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action; and
- (4) provide for the appointment of a receiver.

(d) In an action under subsection (a), (b), or (c), the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to aggrieved consumers.

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or any other party or parties to give security, or additional security, in such sum as the court shall direct to pay all costs, expenses, and disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

(f) **Except as provided in subsection (l),** any person who violates the terms of an injunction issued under subsection (c) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (c) has been violated, the court shall award reasonable costs to the state.

(g) If a court finds any person has knowingly violated section 3 or 10 of this chapter, other than section 3(a)(19) **or 3(h)** of this chapter, the attorney general, in an action pursuant to subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding five thousand dollars (\$5,000) per violation.

(h) If a court finds that a person has violated section 3(a)(19) of this

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chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty as follows:

- (1) For a knowing or intentional violation, one thousand five hundred dollars (\$1,500).
- (2) For a violation other than a knowing or intentional violation, five hundred dollars (\$500).

A civil penalty recovered under this subsection shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of section 3(a)(19) of this chapter.

(i) An elderly person relying upon an uncured or incurable deceptive act, including an act related to hypnotism, may bring an action to recover treble damages, if appropriate.

(j) An offer to cure is:

- (1) not admissible as evidence in a proceeding initiated under this section unless the offer to cure is delivered by a supplier to the consumer or a representative of the consumer before the supplier files the supplier's initial response to a complaint; and
- (2) only admissible as evidence in a proceeding initiated under this section to prove that a supplier is not liable for attorney's fees under subsection (k).

If the offer to cure is timely delivered by the supplier, the supplier may submit the offer to cure as evidence to prove in the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.

(k) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are incurred following the timely delivery of an offer to cure as described in subsection (j) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure.

(l) The following apply to a deceptive act described in section 3(h) of this chapter:

- (1) A person aggrieved by an uncured or incurable deceptive act described in section 3(h) of this chapter may bring an action under subsection (a) for the damages actually suffered as a consumer as a result of the deceptive act. The court may increase damages for a willful deceptive act in an amount that does not exceed three (3) times the actual damages of the consumer suffering the loss.**
- (2) For a violation of an injunction issued under subsection (c), a civil penalty of not more than thirty thousand dollars (\$30,000) may be imposed under subsection (f).**

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(3) If a court finds any person has knowingly violated section 3(h) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding ten thousand dollars (\$10,000) per violation. A civil penalty recovered under this subdivision shall be deposited in the homeowner protection unit account established by IC 4-6-12-9.

SECTION 35. IC 24-5-0.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. **(a) Except as provided in subsection (b), a person who commits an incurable deceptive act is subject to a civil penalty of a fine of not more than five hundred dollars (\$500) for each violation. The attorney general, acting in the name of the state, has the exclusive right to petition for recovery of such a fine, and this fine may be recovered only in an action brought under section 4(c) of this chapter.**

(b) A person who commits an incurable deceptive act described in section 3(h) of this chapter is subject to a civil penalty of a fine of not more than one thousand dollars (\$1,000) for each violation. The attorney general, acting in the name of the state, has the exclusive right to petition for recovery of the fine, and the fine may be recovered only in an action brought under section 4(c) of this chapter.

SECTION 36. IC 24-9-3-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1.1. **(a) For purposes of this section, a creditor conducts a "reasonable inquiry" concerning a borrower's ability to repay a loan if the creditor:**

(1) obtains a consumer report (as defined in IC 24-5-24-2) or other information maintained by a consumer reporting agency (as defined in IC 24-5-24-3) with respect to the prospective borrower; and

(2) obtains information about the prospective borrower through:

(A) a current or past employer of the prospective borrower;

(B) public records; or

(C) any other legal or commercially reasonable means.

(b) As used in this section, "stated income or no documentation loan" means a home loan with respect to which a creditor:

(1) relies solely on a prospective borrower's written or oral statement of the prospective borrower's creditworthiness; and

(2) does not independently verify the accuracy of the

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prospective borrower's statement by conducting a reasonable inquiry into the prospective borrower's creditworthiness; in making an underwriting determination with respect to the prospective borrower.

(c) A creditor may not do either of the following:

(1) Recommend or issue a stated income or no documentation loan to a prospective borrower.

(2) Recommend or issue a home loan to a prospective borrower without first conducting a reasonable inquiry concerning the prospective borrower's ability to repay the home loan. A creditor, or any officer, agent, or employee of a creditor, that conducts a reasonable inquiry under this section is not liable to:

(A) a borrower or prospective borrower;

(B) a subsequent purchaser of a home that was the subject of a home loan on which a borrower has defaulted; or

(C) any other person;

if a borrower later defaults on a home loan issued by the creditor.

SECTION 37. IC 24-9-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 6. (a) A creditor may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a written release upon prepayment. A creditor must provide a payoff balance not later than ten (10) ~~business calendar~~ days after the request is received by the creditor. ~~(b) For purposes of this section;~~ subsection, "fee" does not include actual charges incurred by a creditor for express or priority delivery requested by the borrower of home loan documents to the borrower if such delivery is requested by the borrower.

(b) This subsection applies to a home loan with respect to which any installment or minimum payment due is delinquent for at least ten (10) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than twenty (20) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's

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agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a home loan is sold for an amount that is less than the amount of the borrower's outstanding obligation on the home loan. A creditor, a servicer, or a creditor's agent that fails to respond to an offer within the time prescribed by this subsection is liable:

- (1) under the terms set forth in IC 24-4.5-3-209(3), as if the creditor, servicer, or agent had failed to provide a consumer loan payoff amount; and
- (2) in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 38. IC 24-9-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) A creditor may not make a high cost home loan without regard to repayment ability.

(b) If a creditor presents evidence that the creditor:

- (1) followed commercially reasonable practices in determining the borrower's debt to income ratio; and
- (2) conducted a reasonable inquiry concerning the borrower's ability to repay the high cost home loan under IC 24-9-3-1.1;

there is a rebuttable presumption that the creditor made the high cost home loan with due regard to repayment ability. For purposes of this section, there is a rebuttable presumption that the borrower's statement of income provided to the creditor is true and complete.

(c) For purposes of subsection (b)(1), commercially reasonable practices include the use of:

- (1) the debt to income ratio:
 - (A) listed in 38 CFR 36.4337(c)(1); and
 - (B) defined in 38 CFR 36.4337(d); and
- (2) the residual income guidelines established under:
 - (A) 38 CFR 36.4337(e); and
 - (B) United States Department of Veterans Affairs form 26-6393.

SECTION 39. IC 24-9-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 4.5. Residential Real Estate Closings

Sec. 1. This chapter applies to a home loan closing that takes place after June 30, 2008.

Sec. 2. As used in this chapter, "closing documents" refers to the documents that a settlement service provider is required to provide to a borrower at or before the closing of a home loan, in

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accordance with the requirements of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended.

Sec. 3. (a) As used in this chapter, "settlement service provider" means a person that provides services in connection with the closing of a real estate transaction, including the provision of title examinations or title insurance.

(b) The term includes a closing agent (as defined in IC 6-1.1-12-43(a)(2)).

Sec. 4. A creditor shall provide a prospective borrower with a notice that states that the prospective borrower has a right to receive, at least forty-eight (48) hours before the closing of a home loan, the closing documents with respect to the home loan. The creditor shall provide the notice required by this section at the same time that the creditor provides the good faith estimates required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended.

Sec. 5. (a) Subject to subsections (b) and (c), not later than forty-eight (48) hours before the closing of a home loan, a settlement service provider shall make available to the borrower the closing documents with respect to the home loan. The settlement service provider shall make the closing documents available to the borrower:

- (1)** at the office of the creditor or the settlement service provider;
- (2)** through the United States mail;
- (3)** by facsimile; or
- (4)** through any other commercially reasonable means.

(b) A settlement service provider's duty to make closing documents available to a borrower within the time set forth in subsection (a) applies only to the extent that the settlement service provider is able to obtain the closing documents from the creditor making the home loan. However, a settlement service provider is not relieved of the settlement service provider's duty under subsection (a) unless the settlement service provider first makes a good faith effort to obtain the closing documents from the creditor so as to allow the settlement service provider to in turn provide the documents to the borrower within the time set forth in subsection (a). If, after a good faith effort by the settlement service provider to obtain the closing documents from the creditor as required under this subsection, the creditor provides a set of closing documents that is not complete, the settlement service provider shall provide written notice to the borrower of that fact at the same

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time that the settlement service provider makes the closing documents available to the borrower under subsection (a).

(c) A borrower may waive the right to receive the closing documents with respect to a home loan by providing a written notice of waiver to the settlement service provider at or before the time of closing.

(d) If the borrower does not receive the closing documents for a home loan within the time set forth in subsection (a), the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the loan or, in the case of a purchase money home loan, into the purchase contract.

(e) If the terms of the home loan set forth in the closing documents made available to the borrower under subsection (a) differ from the terms of the home loan presented to the borrower at the time of the closing, the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the loan or, in the case of a purchase money home loan, into the purchase contract. For purposes of this subsection, "terms", with respect to a home loan, include any of the following:

- (1) The total loan amount.
- (2) The loan's rate, including the trigger rate.
- (3) Points and fees.
- (4) Payment amounts and schedules.
- (5) The term or duration of the loan.
- (6) Prepayment penalties, if any.
- (7) Acceleration provisions.
- (8) Servicing of the loan.
- (9) Other provisions concerning the rights and responsibilities of the parties to the home loan.

Sec. 6. (a) A settlement service provider is subject to a civil penalty of twenty-five dollars (\$25) for each instance in which the settlement service provider fails to make closing documents available to a borrower as required by section 5 of this chapter, unless:

- (1) the creditor making the home loan fails to provide the closing documents despite the settlement service provider's good faith efforts to obtain the closing documents, as required under section 5(b) of this chapter; or
- (2) the borrower has waived the borrower's right to receive the closing documents under section 5(c) of this chapter.

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(b) A penalty described in subsection (a):

- (1) may be enforced by the state agency that has administrative jurisdiction over the settlement service provider in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and**
- (2) shall be paid into the property tax replacement fund.**

(c) A settlement service provider is not liable for any other damages claimed by a customer because of the settlement service provider's failure to comply with this chapter.

SECTION 40. IC 24-9-5-4, AS AMENDED BY P.L.3-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) A person who violates this article is liable to a person who is a party to the home loan transaction that gave rise to the violation for the following:

- (1) Actual damages, including consequential damages. A person is not required to demonstrate reliance in order to receive actual damages.
- (2) Statutory damages equal to ~~two (2)~~ **four (4)** times the finance charges agreed to in the home loan agreement.
- (3) Costs and reasonable attorney's fees.

(b) A person may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

(c) The right of rescission granted under 15 U.S.C. 1601 et seq. for a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et seq.) is available to a person acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a home loan at any time during the term of the loan. Any recoupment claim asserted under this provision is limited to the amount required to reduce or extinguish the person's liability under the home loan plus amounts required to recover costs, including reasonable attorney's fees. This article shall not be construed to limit the recoupment rights available to a person under any other law.

(d) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a person. Except as provided in subsection (e), a person is not required to exhaust any administrative remedies under this article or under any other applicable law.

(e) Before bringing an action regarding an alleged deceptive act under this chapter, a person must:

- (1) notify the homeowner protection unit established by IC 4-6-12-2 of the alleged violation giving rise to the action; and

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(2) allow the homeowner protection unit at least ninety (90) days to institute appropriate administrative and civil action to redress a violation.

(f) An action under this chapter must be brought within five (5) years after the date that the person knew, or by the exercise of reasonable diligence should have known, of the violation of this article.

(g) An award of damages under subsection (a) has priority over a civil penalty imposed under this article.

SECTION 41. IC 24-9-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. A person who knowingly or intentionally violates this article commits:

- (1) a Class ~~A misdemeanor~~; **D felony**; and
- (2) an act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

SECTION 42. IC 24-9-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

- (1) issue an injunction;
- (2) order a person to make restitution;
- (3) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this article; and
- (4) impose a civil penalty of not more than ~~ten~~ **twenty** thousand dollars ~~(\$10,000)~~ **(\$20,000)** per violation.

(b) A person who violates an injunction under this section is subject to a civil penalty of not more than ~~ten~~ **twenty** thousand dollars ~~(\$10,000)~~ **(\$20,000)** per violation.

(c) The court that issues an injunction retains jurisdiction over a proceeding seeking the imposition of a civil penalty under this section.

SECTION 43. IC 25-34.1-8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) To be licensed or certified as a real estate appraiser, an individual must meet the following conditions:

- (1) Not have a conviction for any of the following:
 - (A) An act that would constitute a ground for disciplinary sanction under IC 25-1-11.
 - (B) A crime that has a direct bearing on the individual's ability to practice competently.
 - (C) Fraud or material deception in the course of professional services or activities.
 - (D) A crime that indicates the individual has the propensity to

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endanger the public.

- (2) Have satisfied the requirements established under IC 25-34.1-3-8(f).

(b) After June 30, 2008, the board shall require each applicant for initial licensure or certification under this chapter to submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the board in determining whether the applicant should be denied licensure or certification under this chapter for any reason set forth in subsection (a)(1). The applicant shall pay any fees or costs associated with the fingerprints and background check required under this subsection. The board may not release the results of a background check described in this subsection to any private entity.

(c) The board may request evidence of compliance with this section in accordance with subsection (d). Evidence of compliance with this section may include any of the following:

- (1) Subject to subsections (b) and (d)(2), criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation.**
- (2) Credit histories.**
- (3) Other background checks considered necessary by the board.**

(d) The board may request evidence of compliance with this section at any of the following times:

- (1) The time of application for an initial license or certificate.**
- (2) The time of renewal of a license or certificate.**
- (3) Any other time considered necessary by the board.**

(e) The commission, upon recommendation of the board, shall adopt rules under IC 4-22-2 to implement this section.

SECTION 44. IC 27-7-3-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15.5. (a) This section applies to a transaction that:

- (1) is a single family residential:**
 - (A) first lien purchase money mortgage transaction; or**
 - (B) refinancing transaction; and**
- (2) is closed after December 31, 2009.**

(b) Not later than September 1, 2009, the department shall establish and maintain an electronic system for the collection and storage of the following information concerning any of the

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following persons that have participated in or assisted with a transaction to which this section applies, or that will participate in or assist with a transaction to which this section applies:

- (1) The name and license number (under IC 23-2-5) of each loan brokerage business involved in the transaction.
 - (2) The name and registration number (under IC 23-2-5) of each originator involved in the transaction.
 - (3) The name and license number (under IC 25-34.1) of each:
 - (A) principal broker; and
 - (B) salesperson or broker-salesperson, if any; involved in the transaction.
 - (4) The name and certificate number (under this chapter) of each title insurance company involved in the transaction.
 - (5) The name and license number (under IC 27-1-15.6) of each title insurance agent involved in the transaction.
 - (6) The name and:
 - (A) license or certificate number (under IC 25-34.1-3-8) of each licensed or certified real estate appraiser; or
 - (B) license number (under IC 25-34.1) of each broker; who appraises the property that is the subject of the transaction.
 - (7) The name of the mortgagee and, if the mortgagee is required to be licensed under IC 24-4.5-3-502, the license number of the mortgagee.
- (c) The system established by the department under this section must include a form that:
- (1) is uniformly accessible in an electronic format to the closing agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and
 - (2) allows the closing agent to:
 - (A) input the information described in subsection (b) with respect to each person described in subsection (b) that participates in or assists with the transaction, to the extent determinable; and
 - (B) submit the form electronically to a data base maintained by the department.
- (d) Subject to subsection (e), the department shall make the information stored in the data base described in subsection (c)(2)(B) accessible to:
- (1) each entity described in IC 4-6-12-4; and
 - (2) the homeowner protection unit established under IC 4-6-12-2.

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(e) The department, a closing agent who submits a form under subsection (c), each entity described in IC 4-6-12-4, and the homeowner protection unit established under IC 4-6-12-2 shall exercise all necessary caution to avoid disclosure of any information:

- (1) concerning a person described in subsection (b), including the person's license, registration, or certificate number; and
- (2) contained in the data base described in subsection (c)(2)(B);

except to the extent required or authorized by state or federal law.

SECTION 45. IC 34-30-2-96.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 96.7. IC 24-9-3-1.1 (Concerning a creditor's reasonable inquiry concerning a prospective borrower's ability to repay a home loan.)**

SECTION 46. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "task force" refers to the mortgage lending and fraud prevention task force created under subsection (b).

(b) Not later than May 1, 2008, the following agencies shall create the mortgage lending and fraud prevention task force by each appointing an equal number of representatives to serve on the task force:

- (1) The securities division of the office of the secretary of state established under IC 23-19-6-1(a).
- (2) The homeowner protection unit established by the attorney general under IC 4-6-12-2.
- (3) The department of financial institutions established by IC 28-11-1-1.
- (4) The department of insurance created by IC 27-1-1-1.
- (5) The Indiana real estate commission created by IC 25-34.1-2-1.
- (6) The real estate appraiser licensure and certification board created by IC 25-34.1-8-1.

(c) The members of the task force shall annually appoint a chair from among the members of the task force. Each year, the chair shall rotate among the agencies set forth in subsection (b).

(d) Subject to subsection (e), beginning not later than July 2008, the task force shall meet each month to:

- (1) coordinate the state's efforts to:
 - (A) regulate the various participants involved in originating, issuing, and closing home loans;
 - (B) enforce state laws and rules concerning mortgage

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lending practices and mortgage fraud; and

(C) prevent fraudulent practices in the home loan industry and investigate and prosecute cases involving mortgage fraud; and

(2) share information and resources necessary for the efficient administration of the tasks set forth in subdivision (1).

(e) With respect to any meeting of the task force:

(1) one (1) or more members of the task force may participate in the meeting; or

(2) the meeting may be conducted in its entirety;

by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other. Participation by the means described in this subsection constitutes presence in person at the meeting.

(f) Beginning in 2008, not later than November 1 of each year, the task force shall report to the legislative council on the activities of the task force during the most recent state fiscal year. The report required under this subsection must include:

(1) information on the regulatory activities of each agency described in subsection (b), including a description of any:

(A) investigations conducted; or

(B) disciplinary actions taken or criminal prosecutions pursued;

with respect to the professions involved in originating, issuing, and closing home loans;

(2) a description of any challenges:

(A) encountered by the task force during the most recent state fiscal year; or

(B) anticipated by the task force in the current state fiscal year;

in carrying out the duties set forth in subsection (d);

(3) any additional information required by the legislative council; and

(4) any recommendations by the task force for legislation necessary to assist the task force in carrying out the duties set forth in subsection (d).

A report to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

SECTION 47. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "authority" refers to the Indiana housing and community development authority created by IC 5-20-1-3.

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(b) As used in this SECTION, "mortgage transaction" refers to a first lien mortgage transaction (as defined in IC 24-4.4-1-301(6)).

(c) Not later than November 1, 2008, the authority shall provide a report to the legislative council that includes the following:

(1) An identification of:

(A) new sources of funding that can be used to assist Indiana homeowners in refinancing their existing mortgage transactions; or

(B) existing sources of funding that can be directed or redirected to assist Indiana homeowners in refinancing their existing mortgage transactions;

in order to prevent the foreclosure of the homes secured by homeowners' existing mortgage transactions.

(2) A plan for the rehabilitation of neighborhoods or communities in Indiana that have been adversely or disproportionately affected by mortgage foreclosures. The plan required by this subdivision must include an identification of the following:

(A) The areas in Indiana that have been adversely or disproportionately affected by mortgage foreclosures, including any statistics or data used to identify the areas.

(B) New or existing sources of funding that can be directed or redirected to the proposed rehabilitation efforts.

(3) Any recommendations for legislation that the authority determines is needed to accomplish the objectives described in subdivisions (1) and (2).

(4) Any other recommendations of the authority concerning:

(A) the prevention of mortgage foreclosures; or

(B) the rehabilitation of neighborhoods or communities adversely or disproportionately affected by mortgage foreclosures.

(d) The report to the legislative council required by this SECTION must be in an electronic format under IC 5-14-6.

(e) This SECTION expires January 1, 2010.

SECTION 48. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commissioner" refers to the securities commissioner appointed under IC 23-19-6-1.

(b) As used in this SECTION, "director" refers to the director of the department of financial institutions appointed under IC 28-11-2-1.

(c) The commissioner and the director shall cooperate to determine the appropriate state agency or department to oversee

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the regulation of a person that is, has been, or may be subject to regulation, licensure, or registration under both:

- (1) IC 23-2-5; and
- (2) IC 24-4.5, as amended by this act.

(d) The commissioner and the director shall issue joint guidelines to address the appropriate regulation of a person described in subsection (c) not later than September 1, 2008. The joint guidelines issued under this subsection must include any recommendations for legislation needed to implement the appropriate regulation of a person described in subsection (c), as determined by the commissioner and the director.

(e) This SECTION expires January 1, 2010.

SECTION 49. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "board" refers to the real estate appraiser licensure and certification board created by IC 25-34.1-8-1.

(b) As used in this SECTION, "commission" refers to the Indiana real estate commission created by IC 25-34.1-2-1.

(c) Notwithstanding IC 25-34.1-8-10(e), as added by this act, the commission shall adopt rules to implement IC 25-34.1-8-10, as amended by this act, in the same manner as emergency rules are adopted under IC 4-22-2-37.1. Not later than May 1, 2008, the board shall make recommendations to the commission concerning the rules needed to implement IC 25-34.1-8-10, as amended by this act. The commission shall adopt any emergency rules under this SECTION not later than June 1, 2008. An emergency rule adopted under this SECTION:

- (1) takes effect on July 1, 2008; and
- (2) expires on the earlier of:
 - (A) the date the rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36; or
 - (B) January 1, 2010.

(d) This SECTION expires January 1, 2010.

SECTION 50. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 89 as reprinted January 23, 2008.)

BARDON, Chair

Committee Vote: yeas 7, nays 2.

ES 89—LS 6390/DI 101+



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